United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

76-7442

BRS

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

OSCAR ROBERTSON, et al.,

Plaintiffs-Appellees,

WILTON N. CHAMBERLAIN, CLIFFORD RAY and CHESTER WALKER,

Appellants,

- against -

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants-Appellees.

II

BRS

76-7442
76-7451

JOINT APPENDIX

Volume II
500-856

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UNITED STATES COURT OF APPEALS
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CARTER, District Judge

O P I N I O N

I

On May 19, 1975, oral argument was heard on various motions brought on and then pending in this action. It was agreed at that time that early resolution of three of the apparent plethora of problems contributing to a pretrial imbroglio would aid significantly in prompt and orderly discovery among the parties. Accordingly the three critical issues--(1) whether the National Basketball Association ("NBA") defendants are precluded at trial from raising a defense based on the reasonableness of the practices challenged in this case;[1] (2) whether amended Count Three of the American Basketball Association's ("ABA") cross-claim satisfies the particularity requirement of Rule 9(b), F.R.Civ.P.; and (3), whether the NBA may submit interrogatories and requests for the production of documents to the non-representative members of the class on whose behalf this suit was brought--are addressed.

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[1] See Robertson v. National Basketball Association, 389 F. Supp. 867 (S.D.N.Y. 1975).

II

Reasonableness Defense to the Antitrust Claims

Plaintiffs contend that the court's earlier opinion in this case, reported at 389 F. Supp. 867, held that the restraints under attack here are per se violative of the Sherman Act, thereby precluding a defense based on reasonableness. [2]

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[2] In Chicago Board of Trade v. United States, 246 U.S. 231, 238 (1918), the Supreme Court stated the following approach to anti-trust issues:

"The true test of legality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition. To determine that question the court must ordinarily consider the facts peculiar to the business to which the restraint is applied; its condition before and after the restraint was imposed; the nature of the restraint and its effect, actual or probable. The history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, the purpose or end sought to be attained, are all relevant facts."

Certain practices were found to be so anti-competitive, however, that they have been declared illegal per se, freeing the court from the complicated task which follows the utilization of the rule of reason approach. See Northern Pac. Ry. v. United States, 356 U.S. 1, 5 (1958).

While that earlier opinion made clear the court's belief that the restraints in controversy are illegal under the antitrust laws, 389 F. Supp. at 890-91, 895, no final determination as to the invalidity of the provisions and practices in question was made.

The question arose on a motion for summary judgment by the NBA, based, primarily, on the contention that the NBA was protected by a labor exemption to the antitrust laws. The supportive documentary proof was fairly limited to this contention. Plaintiffs did not seek summary judgment themselves; they merely opposed the NBA motion. No final determination could have been rendered in any event without a full-scale hearing on the merits with both sides presenting live as well as documentary evidence. At this stage of the proceedings, I cannot be certain what the full proof is on any controverted issue and, therefore, no line as to relevant proof can be fixed.

Accordingly, defendants are not barred from raising all possible defenses [3] to plaintiffs' action,

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[3] It should be noted, however, that the court is not persuaded by the argument that the NBA, as a joint venture, is immune from Sherman Act condemnation. Neither Levin v. National Basketball Association, 385 F. Supp. 149 (S.D.N.Y. 1974) nor San Francisco Seals, Ltd. v. National Hockey League, 379 F. Supp. 966 (C.D. Cal. 1974) concerned the prevention of competition for players. Moreover, both courts adhered to the proposition that the antitrust laws do apply to professional athletic leagues, regardless of joint venture status, and that joint action by members of a league can have antitrust implications. 385 F. Supp. at 152; 379 F. Supp. at 968, 970-71. Here, the relevant market is the competition for player services, the teams have agreed not to compete in that market and there exists an arguable anti-competitive purpose, effect and injury in that market. The other cases cited by the NBA for this "joint venture" exemption only hold that for certain purposes the league and its member clubs do not violate the antitrust laws when they act together. Those cases did not involve restraints geared to the elimination of competition for players. See United States v. National Football League, 116 F. Supp. 319 (E.D. Pa. 1953) (restraints on telecasting of football games); American Football League v. National Football League, 205 F. Supp. 60 (D. Md. 1962), aff'd, 323 F. 2d 124 (4th Cir. 1963) (monopolization of major league professional football). Other cases merely involved venue requirements for bringing an antitrust action, Hawkins v. National Basketball Association, 288 F. Supp. 614 (W.D. Pa.1968); American Football League v. National Football League, 27 F.R.D. 264 (D. Md. 1961), or the service of process, Erving v. Virginia Squires Basketball Club, 349 F. Supp. 709 (E.D.N.Y. 1972).

including one based on the economic necessity of retaining the challenged restraints. Plaintiffs, of course, are free to move to strike the rule of reason defense once all pretrial discovery has been concluded. At that point defendants will know what their evidentiary defense will consist of on this issue. A full hearing to determine whether the issue is appropriate for consideration by the jury will then be in order.

III

Amended Count Three of the ABA Cross-Claim

By written agreement dated May 7, 1971, (the "Agreement"), the NBA and the ABA attempted to end their differences and to seek a merger of the two leagues, the latter conditioned upon Congressional legislation exempting the combined league from the antitrust laws. The two parties released all claims they had asserted against each other, provided for a stipulation of dismissal with prejudice of an ABA antitrust suit then pending against the NBA, and agreed to use their "best efforts" until January 4, 1974, to procure the passage of reasonable and appropriate legislation which would enable the NBA and the ABA to combine their operations into an expanded single league with a common draft.

As originally pleaded, Count Three of the Cross-claim [4] was based on the allegation that the NBA's express

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4

COUNT THREE

(Damages For Fraud)

I

JURISDICTION OF THE COURT

70. Cross-claimants' claim arises out of the same facts alleged in support of COUNT ONE herein, and the jurisdiction of this Court is invoked under the doctrine of pendent jurisdiction.

II

VENUE, PARTIES, AND CO-CONSPIRATORS

71. Cross-claimants reallege and incorporate herein by this reference the averments of paragraphs 2 through 6, inclusive, above.

III

OFFENSES CHARGED

72. In the Second Agreement, cross-defendants represented that they would use their "best efforts to procure the passage" of "reasonable and appropriate" Congressional legislation exempting a merger or consolidation between the ABA and the NBA from the federal antitrust laws.

(Footnote continued)

contractual representation to use their best efforts to secure the exempting legislation was "false and fraudulent" and "made ... with knowledge that it was false and fraudulent." See n.4 ¶72, supra. In October, 1974, the NBA moved, pursuant to Rules 12(b) (6) and 56 (b), F.R.Civ.P., for judgment dismissing the entire cross-claim.

(Footnote continued from previous page)

Cross-defendants' representation to cross-claimants that they would employ their "best efforts" to secure "reasonable and appropriate" exempting legislation so as to effectuate a "merger" between the ABA and the NBA was false and fraudulent, and cross-defendants made such representation with knowledge that it was false and fraudulent. Cross-defendants intended to induce cross-claimants to act or refrain from acting in reliance on said false and fraudulent representation.

73. Cross-claimants justifiably took or refused to take certain actions as a consequence of cross-defendants' false and fraudulent representation, and have been damaged as a proximate result thereof.

Rule 9(b) provides that "[i]n all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity." Because of the wide range of conduct which fraud encompases, "a defendant needs a substantial amount of particularized information about [the] claim in order to enable him to understand it and effectively prepare his response." Wright & Miller, Federal Practice and Procedure, §1296, at 400 (1969). Sensitivity to the particularity requirement also reflects judicial awareness of the harm that comes to a defendant's reputation when he is charged with such wrongdoing. Segal v. Gordon, 467 F. 2d 602, 607 (2d Cir. 1972); Lewis v. Varnes, 368 F. Supp. 45, 47 (S.D.N.Y.), aff'd, 505 F. 2d 785 (2d Cir. 1974). Accordingly, conclusory allegations that conduct was fraudulent are insufficient, Shemtob v. Shearson, Hammill & Co., 448 F. 2d 442, 444 (2d Cir. 1971), for such general assertions serve no informative function, Lynn v. Valentine, 19 F.R.D. 250, 254 (S.D.N.Y. 1956). "Facts must be alleged which, if proven, would constitute fraud or which lead clearly to the conclusion that fraud has been committed," Chicago Title & Trust Co. v. Fox Theatres Corp., 182 F. Supp. 18, 31 (S.D.N.Y. 1960).

On March 5, 1975, this court, following oral argument on the motion, ruled that Count Three was not "well stated," and that if the ABA sought to allege fraud, it would "ha[ve] to be stated more particularly in regard to the Agreement [for] ... the complaint as it presently stands really alleges a breach of the Agreement." (Transcript of March 5, 1975, hearing at 23-24). Accordingly, the ABA was directed to serve an amended pleading setting forth with particularity the fraud alleged.

The ABA's amended Count Three [5] was served on March 24, with the NBA subsequently renewing their

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[5] COUNT THREE

(Damages For Fraud)

I

JURISDICTION OF THE COURT

70. Cross-claimants' claim arises out of the same facts alleged in support of COUNT ONE herein, and the jurisdiction of this Court is invoked under the doctrine of pendant [sic] jurisdiction.

II

VENUE, PARTIES, AND CO-CONSPIRATORS

71. Cross-claimants reallege and incorporate herein by this reference the averments of paragraphs 2 through 6, inclusive, above.

(Footnote continued)

motion to dismiss on the grounds that the count, as amended, still failed to meet the pleading requirements of Rule 9(b).

(Footnote continued from previous page)

III

ACTS OF CROSS-DEFENDANTS AND CO-CONSPIRATORS AND OFFENSES CHARGED

72. On May 4, 1970, shortly after plaintiffs filed their original complaint herein cross-claimants and cross-defendants consented to the entry of a preliminary injunction prohibiting the two leagues from merging or entering into a non-competitive agreement. That injunction, however, permitted the two leagues to petition Congress for legislation exempting a joint merger from the antitrust laws.

73. The "Second Agreement" was an attempt by the ABA to effectuate what was contemplated in the proviso of the Court Order dated May 4, 1970, to wit: a mechanism by which the two leagues could petition Congress for legislation exempting a joint merger from the antitrust laws.

74. By the terms of the "Second Agreement", cross-claimants and cross-defendants consented to employ their "best efforts", from the date of the

The motion is well taken. Aside from the addition of paragraphs which merely relate the history of

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(Footnote continued from previous page)

Second Agreement's consummation, i.e., May 7, 1971, through January 4, 1974, in order to procure passage of "reasonable and appropriate" legislation exempting a merger of the two leagues from the antitrust laws.

75. For cross-defendants, however, the sine qua non of their entering into the "Second Agreement" was a dismissal "with prejudice" of the ABA Case then pending in the United States District Court. Without such a "with prejudice" dismissal, cross-defendants refused to even discuss seeking a legislative exemption from Congress.

76. The "Second Agreement" provided in relevant part:

> " . . . WHEREAS, the NBA and ABA desire to associate together for the purpose of petitioning Congress to enact legislation whereby the NBA and ABA would be permitted to combine their operations in an expanded single league; and . . .
>
> "3. Submission. The NBA and the ABA through their Merger Committees, promptly will submit to the current and successive sessions of Congress through the calendar year 1973 such legislation as is reasonable and appropriate to permit the NBA and the ABA to combine their operations in an expanded single league with common draft (hereafter called 'exempting legislation') . . .

the events leading to the Agreement and citation of the terms of the Agreement itself, the only change in the

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(Footnote continued from previous page)

"7. Best Efforts. Each of the signatories to this Agreement and its successors agrees that, at least until the end of the calendar year 1973, it will use its best efforts to procure the passage of exempting legislation contemplated by paragraphs 3 and 4 hereof . . . " (Emphasis supplied).

77. The aforesaid representations were made by cross-defendants to cross-claimants for the sole and exclusive purpose of inducing the cross-claimants to effectuate "with prejudice" dismissals of the ABA Case. The cross-defendants' representations to the cross-claimants that cross-defendants would employ their "best efforts" to secure "reasonable and appropriate" exempting legislation so as to effectuate a "merger" between the two was false and fraudulent, and cross-defendants made such representations with full knowledge that it was false and fraudulent.

78. Cross-defendants' representation that they would submit to Congress through the calendar year 1973 "such legislation as is reasonable and appropriate" to permit cross-claimants and cross-defendants to combine their operations in an expanded single league with a common draft was false and fraudulent, and cross-defendants made such representations with knowledge that it was false and fraudulent.

(Footnote continued)

original defective model is the inclusion of allegations charging that the NBA made their "best efforts" repre-

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(Footnote continued from previous page)

79. Cross-defendants made such false and fraudulent representations to cross-claimants for the sole and exclusive purpose of inducing cross-claimants to effectuate "with prejudice" dismissals of the ABA case. Cross-defendants intended to induce cross-claimants to effectuate such "with prejudice" dismissals in reliance of said false and fraudulent representations.

80. As a result of cross-defendants' aforesaid false and fraudulent representations, cross-claimants did in fact effectuate "with prejudice" dismissals of the ABA case. Were it not for the aforesaid false and fraudulent representations made by cross-defendants, cross-claimants would not have effectuated said "with prejudice" dismissals.

81. Cross-claimants' action in effectuating said dismissals were justifiable in that, at the time of the execution of the "Second Agreement", cross-claimants presumed that cross-defendants' aforesaid representations had been made in good faith, and were wholly unaware of their false and fraudulent nature.

82. Cross-claimants have been damaged as a proximate result of their justifable reliance upon cross-defendants' aforesaid false and fraudulent representations.

sentation for the sole purpose of inducing the ABA to effectuate a "with prejudice" dismissal of the suit against the NBA and that the ABA relied upon that representation by so dismissing the action. The same conclusory allegations of fraud which inhered in the earlier count permeate the amended count, viz., that the NBA's representation in the Agreement was "false and fraudulent, and ... made ... with full knowledge that it was false and fraudulent." See n.5, ¶¶77, 78, supra.

In Perma Research and Development Co. v. Singer Co., 410 F. 2d 572 (2d Cir. 1969), plaintiffs sued for breach of contract and also for recission on the ground that the contract "'was procured by fraud and misrepresentation on the part of [defendant] and its agents as to its intention and ability'" to market a certain product. 410 F. 2d at 576. The Court of Appeals held that this allegation "[b]y itself ... is plainly insufficient to state a claim for fraud under Rule 9(b), Fed.R.Civ.P." (footnote omitted). Ibid. The ABA argues that their amended count is unlike the allegations found wanting in Perma Research, for it does in fact state the circumstances surrounding the alleged fraud.

The "circumstances" in Rule 9(b) refer "to matters such as the time, place, and contents of the

false representations, as well as the identity of the person making the misrepresentation and what he obtained thereby." Wright & Miller, supra, §1297, at 403. Several courts have dismissed fraud claims which lacked some of these elements. In Goodall v. Columbia Ventures, Inc., 374 F. Supp. 1324, 1333 (S.D.N.Y. 1974), the court dismissed a counterclaim where "[d]efendants have totally failed to allege, in specific terms, the actions and statements of plaintiff which are claimed to be fraudulent." The court in Goldberg v. Shapiro, CCH Sec. L. Rep. [1974-75 Transfer Binder] ¶94,813 (S.D.N.Y. 1974), found infirm a complaint alleging that an accountant "knew, should have known, or willfully and/or recklessly disregarded its obligation to know that the financial data certified was in fact false" because the complaint made "no mention of who, specifically caused the understatement or over-statement, [and] no allegation of the circumstances of misconduct save for the bare allegations mentioned above." Id. at 96,717. And in Matheson v. White Weld & Co., 53 F.R.D. 450, 452 (S.D.N.Y. 1971), the court dismissed a complaint due to its failure to allege facts showing the circumstances of the alleged fraud where there were no allegations "specifically as to what these statements were or of what the omissions consisted."

The following passage from Trussell v. United Underwriters, Ltd., 228 F. Supp. 757, 774-75 (D. Colo. 1964), is particularly apposite, and highlights the defects in the amended count:

> "The complaint in the instant case does not satisfy the requirements of Rule 9(b). The theory of Rule 9(b) is that the defendant in a case wherein the plaintiff alleges either fraud or mistake --unlike defendants in other actions-- should be rather specifically apprised by the plaintiff's pleading of the occasion on which and the circumstances under which he allegedly defrauded a particular plaintiff. It is obvious that a plaintiff may not be privy to the workings of a group of defendants who have acted in concert to defraud him, but he can at least identify the particular defendants who allegedly dealt directly with him, and he can describe the circumstances under which particular defendants dealt directly with him. Under Rule 9(b) the plaintiff can not be required to allege with particularity the manner in which individual defendants acted in concert, but there is no justification for the secreting of information identifying the actors in the drama and the occasions on which they directly confronted the plaintiffs.
>
> ...
>
> "Rule 9(b) ... only requires the identification of the circumstances constituting fraud or mistake. That requirement means ... that individual plaintiffs should identify particular defendants with whom they dealt directly ... ; that individual plaintiffs should designate the occasions on which affirmative misstatements were allegedly made to them--and by whom; and that individual plaintiffs should designate what affirmative misstatements or half-truths were directed to them--and how."

The allegations here are "merely conclusory and clearly do not apprise the defendants of the claims made against them. ... Some further explanation of the allegations is necessary to indicate how they constitute fraud." Felton v. Walston And Co., 508 F. 2d 577, 581 (2d Cir. 1974). For example, no mention is made in the amended count of who specifically caused or made the representation, and to whom. Similarly absent are any allegations which describe the circumstances under which the author or authors of the representation caused it to be made, that is, the whens and wheres of the alleged fraudulent representations. Finally, the amended count does not reveal the specific acts which are part and parcel of the fraudulent conduct, that is, in what way the fraud was perpetrated, and by whom.

Amended Count Three still appears to merely allege a failure of performance. The ABA has had sufficient opportunity to redraft the count to assert a claim of fraud properly if such claim existed. See, Segal, supra, 467 F. 2d at 607-608. Accordingly, the NBA's motion to dismiss amended Count Three with prejudice is granted.[6]

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[6] This disposition obviates the need to consider the NBA motion for summary judgment for failure of amended Count Three to state a claim upon which relief can be granted.

Felton, supra, 508 F. 2d at 582; Mooney v. Vitolo, 435 F. 2d 838, 839 (2d Cir. 1970); cf. Heart Disease Research Foundation v. General Motors Corp., 463 F. 2d 98, 100 (2d Cir. 1972).

IV

Class Discovery

The NBA defendants also move to overrule plaintiffs' objections to interrogatories and document requests, submitted pursuant to Rules 33 and 34, which were directed at the entire class. Plaintiffs' objections are grounded on the proposition that class members are not "parties" to the action--hence not subject to the discovery devices of Rule 33 and 34--and further that these interrogatories and document requests are designed to expose the more than 400 class members to undue annoyance and hardship.

The use of discovery devices against non-representative class members raises the troublesome conflict between "the competing interests of the absent class members in remaining passive and the defendant in having the ability to ascertain necessary information for its defense." Comment, Making the Class Determination in Rule 23(b) (3) Class Actions, 42 Fordham L. Rev. 791, 811 (1974) [hereafter Making the Class Determination].

Courts facing this problem have reached various conclusions. Some have rejected the use of such devices under the circumstances of the cases before them, though recognizing the applicability of their use at "an appropriate time and for essential purposes," Gardner v. Awards Marketing Corp., 55 F.R.D. 460, 462 (D. Utah 1972); Bisgeier v. Fotomat Corp., 62 F.R.D. 118, 119-121 (N.D. Ill. 1973). One circuit has held that, under certain circumstances, class members who do not comply with discovery under Rules 33 and 34 may find their claims dismissed with prejudice. Brennan v. Midwestern United Life Insurance Co., 450 F. 2d 999 (7th Cir. 1971), cert. denied, 405 U.S. 921 (1972); Clark v. Universal Builders, Inc., 501 F. 2d 324 (7th Cir.), cert. denied, _____ U.S. _____, 95 S. Ct. 657 (1974). Some courts have taken a third position, declaring that treating class members as parties conflicts with Rule 23, effectively emasculating the class action procedure. Wainwright v. Kraftco Corp., 54 F.R.D. 532 (N.D. Ga. 1972); Fischer v. Wolfinbarger, 55 F.R.D. 129 (W.D. Ky. 1971); see also Bucalo v. General Leisure Products Corp., 15 Fed. R. Serv. 2d 564, 566 (S.D.N.Y. 1971); Donson Stores, Inc. v. American Bakeries Co., 58 F.R.D. 485, 488-89 (S.D.N.Y. 1973); Lamb v. United Security Life Co., 59 F.R.D. 44, 48 (S.D. Iowa 1973).

Unlike "typical" class actions which arise under Rule 23(b) (3), this (b) (1) class is composed of fairly finite, readily identifiable members with not insubstantial claims who specifically authorized this litigation and who have financed it since its inception. Such cohesiveness is normally lacking in the "ordinary" class action. The propriety of allowing some form of class discovery should gain force when these factors appear. Cf. Making the Class Determination, supra, 42 Fordham L. Rev. at 807-808. Accordingly, the "strict" approach, which would allow no class discovery under Rules 33 and 34, see Wainwright and Fischer, supra, must be rejected in favor of a more pragmatic resolution.

Brennan, the leading authority for the "liberal discovery" approach, found that the "spirit" of Rule 23(d)--with its general grant of discretion in the trial court--empowered the court to order discovery of class members, and similarly countenanced the utilization of the sanctions of Rule 37(d) to force compliance with such orders. Though recognizing that "an absent class member is given a 'free ride' under Rule 23 and has no duty to actively engage in the prosecution of the action ... the absent class member's interests are identical with those of the named plaintiff and his

rights and liabilities are adjudicated in the principal suit." 450 F. 2d at 1005. The court noted, however, that "absent class members should not be required to submit to discovery as a matter of course," discovery being appropriate only when "necessary or helpful to the proper presentation and correct adjudication of the principal suit." Ibid. Hence the Court of Appeals for the Seventh Circuit set forth the following guidelines:

> "Before ordering such discovery, a trial court must be assured that the requested information is actually needed in preparation for trial and that discovery devices are not used to take unfair advantage of 'absent' class members." Id. at 1006.

Cf. Gardner, supra, 55 F.R.D. at 463 (class interrogatories authorized only "upon a strong showing of necessity or at least of likely material aid in the resolution of common issues").

NBA defendants seek class discovery in three broad areas--bargaining history, reasonableness of the restraints, and fact and amount of damages. The requisite showing of relevance and need has been made for bargaining history and reasonableness of the restraints. As to the first category, this court has held that the applicability of the labor exemption to the antitrust laws will turn, in part, on the history of bargaining. 389 F. Supp. at 895. At least at this juncture, it appears

that the history of individual bargaining between player and club, specifically authorized by collective agreements between the Players Association and the defendants since 1966, is relevant in determining "whether the controversial restraints came into being in the context of arm's-length union-employer negotiations, or were imposed unilaterally by the NBA." Ibid.

Regarding the second issue, the reasonableness of the challenged practices, it has been stated earlier in this opinion that the NBA defendants are not necessarily precluded from raising that issue at trial. One relevant consideration in determining the reasonableness of the restraints is the players' own views regarding the necessity for them. Flood v. Kuhn, 316 F. Supp. 271, 275, 276 (S.D.N.Y. 1970), aff'd, 443 F. 2d 264 (2d Cir. 1971), aff'd, 407 U.S. 258 (1972).

Plaintiffs' objections to class discovery are well taken, however, to the extent that the NBA defendants seek discovery from class members of information relating to the fact and amount of damages. "[D]iscovery on individual issues should be postponed until a decision on the common questions of law and fact has been made." Comment, Party Discovery Techniques: A Threat to Underlying Federal Policies, 68 Nw. U.L. Rev. 1063, 1083 (1974). Even Brennan seemed to disapprove of

class discovery seeking that information. 450 F. 2d at 1005. Since a bifurcated trial procedure will be adopted for this case, separating the issues of liability from individual claims, plaintiffs' objections are sustained and the defendants will not, at this time, have access to the class members themselves for information relating to damages. See, e.g., Green v. Wolf Corp., 406 F. 2d 291, 301 (2d Cir. 1968), cert. denied, 395 U.S. 977 (1969); Gardner, supra, 55 F.R.D. at 463.

The court must also seek to protect the class from undue harassment and excessive taxing of their resources, and from the danger of the use of full-blown discovery as a means of reducing class size. To this end, defendants' right to discovery in the areas heretofore noted is conditioned by the following two limitations: First, the NBA can seek discovery in the allowable areas from the fifty class members who were player representatives between 1964 and 1975, and also from an additional sample of not more than twenty-five persons from the remaining ranks of the class; Second, compliance with such discovery will not be exacted by the threat of dismissal under Rule 37(d)(2), see Korn v. Franchard Corp., 50 F.R.D. 57, 60 (S.D.N.Y. 1970); Note, Requests for Information in Class Actions, 83 Yale L.J. 602, 618 (1974). Unlike Brennan, the class members here cannot

"opt out" from the action and avoid the choice of furnishing information or facing dismissal. The court fully expects, however, that the issue of sanctions will remain theoretical and academic.

V

Summary of Determinations

The defendants are not barred, at this stage, from raising all possible defenses to plaintiffs' action. The motion to dismiss amended Count Three of the ABA cross-claim is granted. The motion to overrule plaintiffs' objection to class discovery is granted to the extent stated in this opinion.

SO ORDERED.

Dated: New York, New York
July 8, 1975

ROBERT L. CARTER
U.S.D.J.

527

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al.,

Plaintiffs,

-against-

70 Civ. 1526 (RLC)

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants.

AMERICAN BASKETBALL ASSOCIATION, et al.,

Cross-claimants,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Cross-defendants.

Supplemental Answers to Plaintiffs' First Set of Interrogatories By Defendant Atlanta Hawks Basketball, Inc.

Defendant Atlanta Hawks Basketball, Inc. makes the following supplemental answers to plaintiffs' First Set of Interrogatories.

Interrogatory 2. Identify as to each NBA member team identified in your answer to Interrogatory No. 1 to be a corporation for the period, each officer and director, and each person having an equity interest of 3 per cent or more in the business.

Answer to 2:

Insofar as this interrogatory seeks identification of this defendant's officers and directors, see this defendant's answer to Interrogatory No. 2 of the ABA's First Set of Interrogatories.

See Rider to No. 2 for the answer to the remainder of this interrogatory.

Answer to 21:

See Answer No. 21 of defendant NBA's Answers to Interrogatories, which is adopted by this defendant.

Interrogatory 22. (a) State the basis of your contention that the present NBA reserve or option clause as its exists in the form set forth in ¶22 of the Uniform Player Contract and/or any predecessor form thereof is or was the result of collective bargaining among the NBA players and/or their representatives and the NBA, the NBA teams and/or their representatives, and (b) identify: (i) all documents upon which you base this contention; (ii) all persons who have custody of such documents; and (iii) all persons who are familiar with such contention and/or documents.

Answer to 22:

See Answer No. 22 of defendant NBA's Answers to Interrogatories, which is adopted by this defendant.

Interrogatory 23. (a) Do you contend that the NBA players accepted or acquiesced in the NBA reserve or option clause in return for benefits from the NBA and its member teams, and (b) if so, identify: (i) each such benefit; (ii) all documents upon which such contention is based; (iii) all persons who have custody of such documents; and (iv) all persons who are familiar with such contentions and/or documents.

Answer to 23:

See Answer No. 23 of defendant NBA's Answers to Interrogatories, which is adopted by this defendant.

Interrogatory 24. Identify for each year during the period, each NBA player as to whom any NBA member team has exercised a "right" of contract renewal or option pursuant to the reserve or option clause, and as to each such player (b) state whether he ultimately achieved so-called "free agent" status as defined herein, and (c) identify: (i) all documents which in any way refer or relate to the exercise of such right of contract renewal; (ii) all persons who have custody of such documents; and (d) all persons who are familiar with such facts and/or documents.

Answer to 24:

The following is a list of players, for each year from 1966 to date, as to whom this team exercised a "right"

of contract renewal or option pursuant to the option clause in the NBA Uniform Player Contract:

1966:

1967: [Not applicable, except for Joe Caldwell and Zelmo Beatty cases (see Rider to Interrogatory No. 66 of Plaintiff's

1968: First Set of Interrogatories)].

1969:

1970:

1971:

1972:

1973:

1974:

1975:

Of the players listed above, the following ulti-

mately achieved "free-agent" status:

Interrogatory 28. (a) State your contention as to the form and meaning of the reserve compensation plan and all other means by which NBA teams have agreed to compensate other NBA teams with respect to players whose stated term of contract has expired and who sign a contract to play for another team, whether or not such reserve compensation plan is set forth in the Kennedy affidavit, and set forth each change in such meaning, the date of each such change and the reason for each such change. (b) identify all persons familiar with such understanding or interpretation.

Answer to 28:

Insofar as this interrogatory has not been objected to, see Answer No. 28 of defendant NBA's Answers to Interrogatories, which is adopted by this defendant.

Interrogatory 29. State (a) the place, date and manner in which the reserve compensation plan, as described in the Kennedy affidavit as heretofore stated, first went into effect in the NBA and (b) the purpose of such plan.

Answer to 29:

See answer No. 28 of defendant NBA's Answers to Interrogatories, which is adopted by this defendant.

Interrogatory 32. (a) State separately the basis for your contentions that: (i) the NBA reserve compensation plan is necessary to organize professional basketball as a league sport; (ii) the NBA reserve compensation plan preserves the competitive balance among the NBA teams and the intergrity of the sport; and (iii) the NBA reserve compensation plan benefits the NBA players, setting forth specifically all such benefits, and (b) identify: (i) all documents upon which you base these contentions; (ii) all persons who have custody of such documents; and (iii) all persons who are familiar with such contentions and/or documents.

Answer to 32:

See Answer No. 32 of defendant NBA's Answers to Interrogatories, which is adopted by this defendant.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al., Plaintiffs,	:	70 Civ. 1526 (RLC)
-against-	:	
NATIONAL BASKETBALL ASSOCIATION, et al., Defendants.	:	
AMERICAN BASKETBALL ASSOCIATION, et al., Cross-claimants,	:	
-against-	:	
NATIONAL BASKETBALL ASSOCIATION, et al., Cross-defendants.	:	

PLAINTIFF CHESTER WALKER'S SUPPLEMENTARY ANSWER TO INTERROGATORY NO. 11 OF THE NBA DEFENDANTS' FIRST SET OF INTERROGATORIES TO THE NAMED PLAINTIFFS AND EACH CLASS MEMBER.

Plaintiff Chester Walker hereby answers Interrogatory No. 11 of the NBA Defendants' first set of "class interrogatories" pursuant to the Memorandum of Agreement Concerning the NBA Defendants' Document Requests and Interrogatories to Plaintiffs, dated April 25, 1975, subject to the Responses and Objections, dated April 7, 1975, filed by plaintiffs in respect to such interrogatories.

Interrogatory No. 11.

Have you ever received compensation for promotional activities, including, without limitation, publicity appearances, product endorsements, etc.? If so, for each company which compensated you for promotional activity:

(a) List the named and addresses of each such company;

(b) Identify the persons at each company with whom you discussed compensation arrangements for such promotional activity;

(c) Explain exactly what the promotional activity consisted of;

(d) State the period of time in which you were engaged in each such type of promotional activity;

(e) Set forth the amount of income, by year and company, you received for each such promotional activity;

(f) State whether any basketball team assisted you in becoming engaged to conduct such promotional activity, and if so (i) identify the team and (ii) set forth what the team did in that connection; and

(g) Identify all documents in your possession, custody or control related in any way to such promotional activity.

Answer:

Upon information and belief and to the best of my recollection, the compensation which I received for product endorsements, publicity appearances (including speaking engagements) and summer camp activities is approximately as follows:

Season	Camps	Personal Appearances	Endorsements
1962-65	--	--	--
1966-70	$300 per year	$250 per year	$500 per year
1971-75	400 per year	400 per year	800 per year

Chester Walker

CHESTER WALKER

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

CHESTER WALKER, being duly sworn, deposes and says I am a plaintiff in this action and I have read the foregoing supplementary answer and the same is true to my own knowledge, information or belief based upon my best recollection.

Chester Walker
CHESTER WALKER

Sworn to before me this
25th day of August, 1975.

James W. Quinn
Notary Public

JAMES W. QUINN
Notary Public, State of New York
No. 60-8470501
Qualified in Westchester County
Certificate filed in New York County
Commission Expires March 30, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al.,

Plaintiffs,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants.

70 Civ. 1526 (RLC)

Consent ORDER

Pursuant to the opinions and orders of this Court dated as of February 14, 1975 and July 8, 1975 respectively directing: that this action be maintained as a class action; that the class shall comprise the persons as set forth on page 3 of the attached Exhibits 1 and 2; that notice of this action be sent to all class members; and that limited discovery may be had as to certain class members, it is hereby

ORDERED, that the Notice of Pendency of Class Action together with a Notice of Deposition and Document Demand in the form annexed hereto as Exhibit 1 be sent to all class members other than the plaintiffs herein who were player representatives of players on a National Basketball Association team some time between 1964 to date, and it is further

ORDERED, that the Notice of Pendency of Class Action in the form annexed hereto as Exhibit 2 be sent to all other class members, and it is further

ORDERED, that all such Notices be sent by first class mail to the last known address of each class member.

Dated: New York, New York
September 15, 1975

/s/ Robert L. Carter
U.S.D.J.

The form of this order is hereby consented to:

WEIL, GOTSHAL & MANGES

By _____
(A Member of the Firm)
Attorneys for Plaintiffs
767 Fifth Avenue
New York, New York 10022

PROSKAUER ROSE GOETZ & MENDELSOHN

By _____
(A Member of the Firm)
Attorneys for the National Basketball Association and all of its member teams other than Madison Square Garden Center, Inc. and Madison Square Garden Corporation
300 Park Avenue
New York, New York 10022

LAW OFFICE OF FREDERICK P. FURTH, ESQ.

By _____
Attorneys for the American Basketball Association and all of its member teams other than Long Island Sports Enterprises, Inc.
Russ Building, Suite 1330
235 Montgomery Street
San Francisco, California 94104

SPENGLER CARLSON GUBAR & CHURCHILL

By _____
(A Member of the Firm)
Attorneys for Long Island Sports Engerprises, Inc.
280 Park Avenue
New York, New York 10017

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PAUL, WEISS, RIFKIND, WHARTON & GARRISON

By _____
(A Member of the Firm)
Attorneys for Madison Square Garden
Center, Inc. and Madison Square
Garden Corporation
345 Park Avenue
New York, New York 10022

EXHIBIT 1 537

NOTICE OF PENDENCY OF CLASS ACTION

OFFICE OF THE CLERK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al.,	:	70 Civ. 1526 (R'
Plaintiffs,	:	IMPORTANT: IF YOU HAVE EVER BEEN A PLAYER REPRESENTATIVE THIS COURT ORDERED NOTICE REQUIRES YOU TO TAKE CERTAIN ACTION THAT IS DESCRIBED IN APPENDIX A HERETO
-against-	:	
NATIONAL BASKETBALL ASSOCIATION, et al.,	:	
Defendants.	:	

TO ALL PERSONS WHO ARE NOW OR AT ANY TIME HAVE BEEN ACTIVE PLAYERS FOR MEMBER TEAMS IN THE NATIONAL BASKETBALL ASSOCIATION SINCE THE PLAYING SEASON WHICH INCLUDED APRIL 16, 1970

Pursuant to Rule 23 of the Federal Rule of Civil Procedure, you are hereby notified:

There is now pending in this Court (before the Honorable Robert L. Carter) a civil action for money damages (trebled) and injunctive relief brought by present and former players in the National Basketball Association (the "NBA") based on alleged violations of the federal antitrust laws (Section 1 and 2 of the Sherman Act). The violations alleged are agreements, combinations and conspiracies among the defendant professional basketball leagues and teams (as described below) to restrain competition for the services of professional basketball players in the form of (a) past and present intra-league restraints between and among the

NBA and its member teams, and (b) past and present inter-league restraints between and among the American Basketball Association (the "ABA"), the ABA's member teams, the NBA and the NBA's member teams.

The complaint filed in this action seeks an award of trebled money damages, injunctive relief, reimbursement of litigation costs and an award of attorneys' fees on behalf of the named plaintiffs and the members of the class (described below) against the NBA and certain of its member teams for injury caused by, and future injury that may result from, the alleged intra-league restraints. The intra-league practices challenged in the action include the college draft, the "reserve" or "option" clause, the NBA policy or practice under which one member team in the NBA is compensated by another NBA team when a player signs a contract with that other NBA team after the player achieves "free agent" status, boycotts, blacklists, Uniform Player Contracts and other alleged agreements among the NBA and its member teams. The complaint seeks the same relief against the NBA, certain of its member teams and the ABA (but not for money damages against the ABA) for injury caused by, and the future injury that may result from, the alleged restraints. The alleged inter-league restraints include the proposed 1970 and any other merger or combination between or among the NBA, its member teams, the ABA and its member teams, and any non-competition agreements between or among them.

The period for which damages are sought by the complaint on behalf of the named plaintiffs and each class member is April 16, 1966 through the date of a final judgment in this action.

The defendants have denied the material allegations of the complaint and have denied liability.

The named plaintiffs in this action are Oscar Robertson, William Bradley, Joseph Caldwell, Archie Clark, Mel Counts, John Havlicek, Donald Kojis, Jon McGlocklin, McCoy McLemore, Thomas Meschery, Jeffry Mullins, Westley Unseld, Richard Van Arsdale and Chester Walker.

On February 14, 1975, and September , 1975 the Court entered orders under Rule 23 of the Federal Rules of Civil Procedure determining that: (1) this action shall be maintained as a class action under Rule 23(b)(1) of the Federal Rules of Civil Procedure; (2) the 14 above named plaintiffs will fairly and adequately represent the class; (3) this Notice should be sent to the class; and (4) the class on whose behalf this action is being maintained is as follows:

> All persons who (1) were on the active list of or under contract to a team in the NBA as of or since April 16, 1970 and who played at least one regular season or play-off game in the NBA during or since the basketball season which included April 16, 1970 and (2) in the future play at least one such game for a team in the NBA prior to the date of a final judgment in this action.

This notice is being sent to you in the belief that you may be a member of the above class of plaintiffs, whose rights will be affected by this litigation.

THIS NOTICE IS NOT TO BE UNDERSTOOD AS AN EXPRESSION OF ANY OPINION BY THIS COURT AS TO THE MERITS OF ANY OF THE CLAIMS OR DEFENSES ASSERTED BY PLAINTIFFS OR DEFENDANTS, but is sent for the sole purpose of informing you of the pendency of this litigation so that you may make appropriate decisions as to steps you may wish to take in relation to this litigation.

All opinions and rulings of the Court are a matter of records, and they, together with the pleadings and other papers filed in this action, are available for inspection in the office of the Clerk of this Court, or at the offices of Lawrence Fleisher, Esq., 15 Columbus Circle, New York, New York or at the office of the following counsel of record for the class representatives:

Weil, Gotshal & Manges
767 Fifth Avenue
New York, New York 10022
(212) 758-7800

Attention: Ira M. Millstein or
Peter Gruenberger

(Such counsel will answer any inquiry regarding this action that you may have).

Each member of the class is hereby notified that:

(a) each member of the class will be represented by the above-named attorneys for the class representatives, unless an application is made as described in (c) below;

(b) each member of the class will be bound by an adjudication, whether favorable or unfavorable, on the merits of the issues to be litigated in this action;

(c) if any class member desires to be represented separately by counsel of his own choice at his own cost, he may (solely at his own cost) file an application to the Court for leave to intervene as a party plaintiff or otherwise become a party to the litigation; and

(d) members of the class will be subject to orders and notices of the Court, and by order of the Court certain members will be required on the motion of the NBA to produce documents and appear in person to give pre-trial deposition testimony. APPENDIX A HERETO CONTAINS DIRECTIONS TO THOSE MEMBERS OF THE CLASS WHO ARE OR WERE PLAYER REPRESENTATIVES CONCERNING DOCUMENTS AND PRE-TRIAL TESTIMONY. IF YOU ARE SUCH A PERSON YOU SHOULD READ APPENDIX A CAREFULLY AND YOU ARE REQUIRED TO TAKE THE ACTION DESCRIBED THEREIN.

This notice shall be sent on or about November 1, 1975 to each new class member, and sent on or about each November 1 thereafter prior to a final adjudication on the merits in this action to further new class members.

Dated: New York, New York
September , 1975

Clerk
United States District Court
Southern District of New York
Federal Courthouse
Foley Square
New York, New York 10007

APPENDIX A 542

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al.,

Plaintiffs,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants.

70 Civ. 1526 (RLC)

NOTICE OF DEPOSITION AND DOCUMENT DEMAND

TO: [Insert Name]

The United States District Court for the Southern District of New York has ruled that because you may be a member of the class of plaintiffs described in the accompanying notice, and because you were a player representative of players on a National Basketball Association ("NBA") team some time between 1964 to date, the NBA and certain of its member teams have the right which they have elected to exercise to require that you appear for your deposition in this case and to produce the documents listed in the document demand attached to this Appendix A.

To expedite arranging for your deposition, will you please list below five different days (on as many different weeks as possible), in order of preference, when you would be available to have your deposition taken between November 1, 1975 and January 2, 1976, and list the city in which you will be available for a deposition on each such date. This information should be mailed to Lawrence Fleisher, Esq., 15 Columbus Circle, New York, New York 10023. Upon receipt from you of this information you will be contacted as promptly as possible as to the specific day your deposition will be held.

In addition, you should promptly forward to Mr. Fleisher any documents in your possession or control that come within the categories listed on the document demand attached hereto.

I am available to have my deposition held on the following dates (listed in order of preference) between November 1, 1975 and January 2, 1976, at the location indicated.

	Date	City	State
1.			
2.			
3.			
4.			
5.			

NOTE:

You have the right to seek a protective order from the Court under the Federal Rules of Civil Procedure if you believe you have objections to any matter contained in this Notice of Deposition and Document Demand.

DOCUMENT DEMAND

You should promptly forward the documents listed below to Lawrence Fleisher, Esq., 15 Columbus Circle, New York, New York 10023.

The word "documents" means any writing of any kind, including letters, memoranda, handwritten notes, newspapers or magazine articles, newsletters, minutes of meetings, etc.

1. All documents of any kind in your possession or control referring or relating to:

(a) the college player draft used by either the National Basketball Association ["NBA"] or the American Basketball Association ["ABA"];

(b) the option or reserve clause in the NBA Uniform Player Contract including paragraph 22 of the NBA Uniform Player Contract;

(c) the right or power of the NBA Commissioner to award compensation to a team that has lost a player who has played out the option in the Uniform Player Contract; and

(d) the right of an NBA or ABA team to assign a player's contract to another team.

2. All documents of any kind in your possession or control which were sent to or received from any NBA or ABA basketball team or league referring or relating to:

(a) proposals that you enter into a contract to play professional basketball;

(b) terms that might be included in any contract you might enter into to play professional basketball; and

(c) a renewal or renegotiation of any contract to play professional basketball you may have previously entered into.

3. All contracts, proposed contracts, and drafts of contracts, between you and any team in either the NBA or ABA, or between you and the NBA and ABA as a league, regarding your services as a professional basketball player.

4. All documents of any kind referring or relating to the subjects listed in item 1(a) - (e), item 2(a) (c) or item 3 above, which are in the possession or control of any attorney, agent or other representative who represents you in negotiations with a professional basketball team including, if possible any former attorney, agent or other representatives who has represented you in the past.

5. All documents of any kind in your possession or control referring or relating to the basketball salaries of other professional basketball players.

6. All documents of any kind in your possession or control referring or relating to:

(a) meetings of the National Basketball Players Association;

(b) meetings of the American Basketball Players Association;

(c) negotiations between the NBA and National Basketball Players Association; and

(d) negotiations between the ABA and the American Basketball Players Association.

7. All documents of any kind in your possession or control referring or relating to:

(a) any provision of any collective bargaining agreement between the NBA and the National Basketball Players Association; and

(b) any provision of either the NBA or ABA Uniform Player Contract.

EXHIBIT 2

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NOTICE OF PENDENCY OF CLASS ACTION

OFFICE OF THE CLERK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al.,	:	
Plaintiffs,	:	70 Civ. 1526 (RLC)
-against-	:	
NATIONAL BASKETBALL ASSOCIATION, et al.,	:	
Defendants.	:	

TO ALL PERSONS WHO ARE NOW OR AT ANY TIME HAVE BEEN ACTIVE PLAYERS FOR MEMBER TEAMS IN THE NATIONAL BASKETBALL ASSOCIATION SINCE THE PLAYING SEASON WHICH INCLUDED APRIL 16, 1970

Pursuant to Rule 23 of the Federal Rules of Civil Procedure, you are hereby notified:

There is now pending in this Court (before the Honorable Robert L. Carter) a civil action for money damages (trebled) and injunctive relief brought by present and former players in the National Basketball Association (the "NBA") based on alleged violations of the federal antitrust laws (Sections 1 and 2 of the Sherman Act). The violations alleged are agreements, combinations and conspiracies among the defendant professional basketball leagues and teams (as described below) to restrain competition for the services of professional basketball players in the form of (a) past and present intra-league restraints between and among the

NBA and its member teams, and (b) past and present inter-league restraints between and among the American Basketball Association (the "ABA"), the ABA's member teams, the NBA and the NBA's member teams.

The complaint filed in this action seeks an award of trebled money damages, injunctive relief, reimbursement of litigation costs and an award of attorneys' fees on behalf of the named plaintiffs and the members of the class (described below) against the NBA and certain of its member teams for injury caused by, and future injury that may result from, the alleged intra-league restraints. The intra-league practices challenged in the action include the college draft, the "reserve" or "option" clause, the NBA policy or practice under which one member team in the NBA is compensated by another NBA team when a player signs a contract with that other NBA team after the player achieves "free agent" status, boycotts, blacklists, Uniform Player Contracts and other alleged agreements among the NBA and its member teams. The complaint seeks the same relief against the NBA, certain of its member teams and the ABA (but not for money damages against the ABA) for injury caused by, and the future injury that may result from, the alleged restraints. The alleged inter-league restraints include the proposed 1970 and any other merger or combination between or among the NBA, its member teams, the ABA and its member teams, and any non-competition agreements between or among them.

The period for which damages are sought by the complaint on behalf of the named plaintiffs and each class member is April 16, 1966 through the date of a final judgment in this action.

The defendants have denied the material allegations of the complaint and have denied liability.

The named plaintiffs in this action are Oscar Robertson, William Bradley, Joseph Caldwell, Archie Clark, Mel Counts, John Havlicek, Donald Kojis, Jon McGlocklin, McCoy McLemore, Thomas Meschery, Jeffry Mullins, Westley Unseld, Richard Van Arsdale and Chester Walker.

On February 14, 1975, and September , 1975 the Court entered orders under Rule 23 of the Federal Rules of Civil Procedure determining that: (1) this action shall be maintained as a class action under Rule 23(b)(1) of the Federal Rules of Civil Procedure; (2) the 14 above named plaintiffs will fairly and adequately represent the class; (3) this Notice should be sent to the class; and (4) the class on whose behalf this action is being maintained is as follows:

> All persons who (1) were on the active list of or under contract to a team in the NBA as of or since April 16, 1970 and who played at least one regular season or play-off game in the NBA during or since the basketball season which included April 16, 1970 and (2) in the future play at least one such game for a team in the NBA prior to the date of a final judgment in this action.

This notice is being sent to you in the belief that you may be a member of the above class of plaintiffs, whose rights will be affected by this litigation.

THIS NOTICE IS NOT TO BE UNDERSTOOD AS AN EXPRESSION OF ANY OPINION BY THIS COURT AS TO THE MERITS OF ANY OF THE CLAIMS OR DEFENSES ASSERTED BY PLAINTIFFS OR DEFENDANTS, but is sent for the sole purpose of informing you of the pendency of this litigation so that you may make appropriate decisions as to steps you may wish to take in relation to this litigation.

All opinions and rulings of the Court are a matter of records, and they, together with the pleadings and other papers filed in this action, are available for inspection in the office of the Clerk of this Court, or at the offices of Lawrence Fleisher, Esq., 15 Columbus Circle, New York, New York or at the office of the following counsel of record for the class representatives:

Weil, Gotshal & Manges
767 Fifth Avenue
New York, New York 10022
(212) 758-7800

Attention: Ira M. Millstein or
Peter Gruenberger

(Such counsel will answer any inquiry regarding this action that you may have).

Each member of the class is hereby notified that:

(a) each member of the class will be represented by the above-named attorneys for the class representatives, unless an application is made as described in (c) below;

(b) each member of the class will be bound by an adjudication, whether favorable or unfavorable on the merits of the issues to be litigated in this action;

(c) if any class member desires to be represented separately by counsel of his own choice at his own cost, he may (solely at his own cost) file an application to the Court for leave to intervene as a party plaintiff or otherwise become a party to the litigation; and

(d) members of the class will be subject to orders notices of the Court, and by order of the Court certain members will be required on the motion of the NBA to produce documents and appear in person to give pre-trial deposition testimony.

This notice shall be sent on or about November 1, 1975 to each new class member, and sent on or about each November 1 thereafter prior to a final adjudication on the merits in this action to further new class members.

Dated: New York, New York
September , 1975

Clerk
United States District Court
Southern District of New York
Federal Courthouse
Foley Square
New York, New York 10007

LEFT INTENTIONALLY

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al.,

Plaintiffs,

- against -

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants.

70 Civ. 1526

O R D E R

AMERICAN BASKETBALL ASSOCIATION, et al.,

Cross-claimants,

- against -

NATIONAL BASKETBALL ASSOCIATION, et al.,

Cross-defendants.

All parties to this action being present in open court on this the 9th day of September, 1975, it is ORDERED that:

1. The American Basketball Association ("ABA") shall answer deposition questions pertaining to the motivation of the ABA in bringing the cross-claim, concerning the financial condition of ABA franchises, and relating to charts or other materials prepared by such witnesses.

2. The expenses incident to the retaking of any deposition by any party necessitated solely by objections heretofore overruled in open court shall be borne by the party whose objections necessitated recalling the party in question. Such expenses shall be limited to round-trip first-class air or railway costs for one deposing counsel for opposing parties, plus expenses of $100 per day.

3. The ABA will immediately submit properly verified answers to interrogatories to the National Basketball Association ("NBA").

4. Players deposed by the NBA may not be questioned as to their suggested modifications of the reserve clause.

5. Discovery shall end by February 1, 1976.

6. The pretrial order shall be submitted to the court by March 1, 1976.

7. Plaintiffs may move to strike the NBA's "rule of reason" defense [1] once discovery is completed.

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[1] See Robertson v. National Basketball Association, _____ F. Supp. _____, No. 70 Civ. 1526, at 2-5 (S.D.N.Y., filed July 8, 1975).

If plaintiffs so move, a hearing on the issue will be convened on or about March 15, 1976. [2]

8. The scheduled trial date is on or about May 3, 1976.

SO ORDERED.

Dated: New York, New York
September 16, 1975

Robert L Carter
U.S.D.J.

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[2] If parties agree, the court will hear the motion on the reasonableness defense on or about February 6, 1976; in that event the pretrial order shall be submitted by March 15, 1976.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al., Plaintiffs, -against- NATIONAL BASKETBALL ASSOCIATION, et al., Defendants.	70 Civ. 1526 (RLC) AFFIDAVIT OF MAILING
AMERICAN BASKETBALL ASSOCIATION, et al., Cross-claimants, -against- NATIONAL BASKETBALL ASSOCIATION, et al., Cross-defendants.	

STATE OF NEW YORK)
: ss.
COUNTY OF NEW YORK)

JAMES W. QUINN, being duly sworn, deposes and says:

I am a member of the Bar of this Court and am associated with the firm of Weil, Gotshal & Manges, attorneys for the plaintiffs in this action. Pursuant to Orders of this Court, dated February 14, 1975 and September 15, 1975, I personally supervised the mailing of the Notice of Pendency of Class Action to members of the class as defined in that Notice. Copies of that Notice

in the forms annexed to this Court's September 15, 1975 Order were sent to 420 class members on September 19, 1975 and to an additional 26 class members on September 22, 1975. All such Notices were sent by first class mail to the last known address of each class member.

JAMES W. QUINN

Sworn to before me this
22nd day of September, 1975

Notary Public

JOSEPH H. YERG
Notary Public, State of New York
No. [illegible]
Qualified in [illegible] County
Commission Expires March 30, 1977

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al., Plaintiffs, -against- NATIONAL BASKETBALL ASSOCIATION, et al., Defendants.	70 Civ. 1526 (RLC) NOTICE OF MOTION TO AMEND COMPLAINT
AMERICAN BASKETBALL ASSOCIATION, et al., Cross-claimants, -against- NATIONAL BASKETBALL ASSOCIATION, et al., Cross-defendants.	

S I R S:

PLEASE TAKE NOTICE that upon the pleadings and all prior proceedings in this action, and the annexed affidavit of Peter Gruenberger, sworn to on the 17th day of October, 1975, the exhibits annexed thereto and the memorandum submitted in support thereof, plaintiffs will move this Court on the 7th day of November 1975 at the United States Courthouse, Foley Square, New York, New York, at a time and place to be fixed by the Court, for an order, pursuant to Rule 15(a) of the Federal Rules of

Civil Procedure, granting plaintiffs leave to file and ser a Second Amended and Supplemental Class Action Complaint in the form annexed as Exhibit A to the Gruenberger Affidavit, and for such other and further relief as to the Court may seem just and proper.

Dated: New York, New York
October 17, 1975

Yours, etc.,

WEIL, GOTSHAL & MANGES

By _____
(A Member of the Firm)
Attorneys for Plaintiffs
767 Fifth Avenue
New York, New York 10022
(212) 758-7800

TO: PROSKAUER ROSE GOETZ & MENDELSOHN
Attorneys for NBA Defendants
other than Madison Square Garden
Corporation and Madison Square
Garden Center, Inc.
300 Park Avenue
New York, New York 10022

PAUL, WEISS, RIFKIND, WHARTON & GARRISON
Attorneys for Madison Square Garden
Corporation and Madison Square Garden
Center, Inc.
345 Park Avenue
New York, New York 10022

FREDERICK P. FURTH, ESQ.
Attorney for the ABA and all of its
member teams other than Long Island
Sports Enterprises, Inc.
Russ Building, Suite 1330
235 Montgomery Street
San Francisco, California 94104

SOMMER, TINKHAM, BARNARD, FREIBERGER
AND SCOPELITIS
Associate Counsel for the ABA and all
of its member teams other than Long
Island Sports Enterprises, Inc.
815 Merchants Bank Building
Indianapolis, Indiana 46402

SPENGLER CARLSON GUBAR & CHURCHILL
Attorneys for Long Island Sports
Enterprises, Inc.
280 Park Avenue
New York, New York 10017

MICHAEL H. GOLDBERG, ESQ.
Attorney for Defendant AMERICAN
BASKETBALL ASSOCIATION
1700 Broadway
New York, New York 10019

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al.,

Plaintiffs,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants.

70 Civ. 1526 (RLC)

AFFIDAVIT

AMERICAN BASKETBALL ASSOCIATION, et al.,

Cross-claimants,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Cross-defendants.

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

PETER GRUENBERGER, being duly sworn, deposes and says:

1. I am a member of the Bar of this Court and of the firm of Weil, Gotshal & Manges, counsel for plaintiffs herein. As such, I am fully familiar with the facts recited herein. I make this affidavit in support of plaintiffs' motion for an order granting them leave to file and serve a Second Amended and

Supplemental Class Action Complaint ("Second Amended Complaint") in the form attached hereto as Exhibit A.

2. Plaintiffs' sole purpose in seeking to amend the existing complaint is to insure that all of their claims and those of the class members whom they represent may be tried at one time in their entirety and on their merits by this Court at the liability phase of the trial. The filing of this Second Amended Complaint has been necessitated primarily by plaintiffs' uncovering new facts during discovery which form the basis of two additional restraints imposed upon plaintiffs by the NBA defendants, which facts were not known to plaintiffs when they first amended the complaint. In addition, by virtue of the passage of time, this Court's prior rulings and orders and the admission of new members into the NBA, certain other specific and very limited revisions must be made in the present complaint to conform the pleadings to actual fact. This Court will recall that the complaint was first amended, primarily to add new teams as defendants, by stipulation among the parties in March 1974. A copy of the stipulation is annexed hereto as Exhibit B. The NBA defendants have now refused so to stipulate again, even though they led me to believe there would be no problem in so stipulating, and now insist on putting plaintiffs and this Court to the wasteful burden of motion practice, without once stating any credible reason for refusing to agree to this justifiable amendment.

3. Plaintiffs' changes in the present complaint are limited to four specific areas and are detailed in my letter of September 24, 1975 to David Stern (annexed hereto as Exhibit C): (i) the pleading of two restraints, the facts as to which were unknown to plaintiffs when the first amendment was permitted

in March 1974, and which were recently uncovered in the course of discovery which began in April 1975; (ii) amending the class definition so as to conform the pleadings to this Court's prior class action rulings and to the Notice of Pendency of Class Action which was previously agreed to and drafted jointly by plaintiffs and the NBA defendants* and mailed to all class members after approval by the Court; (iii) adding two new defendants, the Detroit Pistons Basketball Club and the New Orleans Professional Basketball Club, as new members in the NBA, which have adopted the restraints of the other NBA defendants; and (iv) making several minor changes, correcting typographical errors, renumbering paragraphs and otherwise conforming the pleadings to the Court's prior rulings and to the facts as uncovered in the period of time since the filing of the first amended complaint.

4. The record is clear that (a) plaintiffs repeatedly have sought to avoid filing this motion and (b) that the NBA defendants' obdurance without any justification left plaintiffs no choice but to file this motion. I informed counsel for the NBA defendants in August 1975 that the results of discovery thus far and other events, including the admission of new NBA members, would require that the complaint be amended. At that time I orally told the NBA's counsel in some detail about the nature of the changes -- particularly about the two new restraints -- and requested that counsel stipulate to the amendment. Counsel stated that they would probably consent to the amendment, upon their review of the matter, although they said they would not accept service of process on behalf of the two new NBA teams to be named therein.

* Mr. Cardozo, on behalf of the NBA defendants, stressed in the oral argument of September 9, 1975 that the NBA defendants and the plaintiffs had cooperated as to drafting that class notice.

5. After a similar discussion with NBA counsel in early September 1975, I forwarded a draft of the proposed Second Amended Complaint to them for their review and consent with my letter of September 24, 1975 to Mr. Stern, still believing that except for the question of accepting service of process, counsel for the NBA would agree to the amendment (See Exhibit C). In response, I received a letter from Mr. Stern dated October 3, 1975, rejecting plaintiffs' request for a stipulated amendment not because of any problem created by the amendment, but solely and inexplicably because "Judge Carter has fixed a February 1, 1976 cut-off date for discovery and a May 3, 1976 trial date." A copy of that letter is annexed hereto as Exhibit D. I did not, and still do not, understand the slightest connection between the Court's time schedules and counsel's change of heart.

6. By letter dated October 6, 1975 (a copy of which is annexed hereto as Exhibit E), I reviewed the events leading to my request and asked that the NBA reconsider its position, in light of the fact that no prejudice or delay could possibly result in agreeing to the amendment. Without denying a single fact set forth in my letter and confirming that he had changed his mind in refusing to agree to an amendment, Mr. Stern again flatly refused my request stating merely, without any explanation or basis in fact, that such an amendment "would involve additional work" to prepare this case for trial. A copy of Mr. Stern's October 7, 1975 letter to me is annexed hereto as Exhibit F. As set forth below, the NBA's "excuse" for non-cooperation has no foundation in reality and since there is no showing of prejudice from delay or surprise, the amendment should be permitted.

The Two Recently Discovered Antitrust Restraints

7. Plaintiffs seek to assert the existence of two additional restraints that violate the antitrust laws. The first relates to the NBA defendants' reserve compensation plan (Second Amended Complaint ¶¶43-44) and the second relates to the exchange and dissemination of player salary information among the competing NBA teams (Second Amended Complaint ¶28). The factual basis of these restraints was uncovered just recently during document discovery and depositions.

A. The Reserve Compensation Plan

8. The Court will recall that the NBA and all its member teams, by their own admission, have engaged in the practice of imposing upon so-called "free agent" players, who have completed the playing term plus all options for one team, the requirement that any new team which executes a contract with the "free agent" must compensate the player's former team with cash and/or other players and/or draft choices.

9. The existence of the NBA's reserve compensation plan was first announced in writing to plaintiffs and to the Court in the July 25, 1974 affidavit of J. Walter Kennedy (¶¶16-17), submitted in support of the NBA defendants' summary judgment motion and expressly considered by this Court in rendering its February 14, 1975 decision. But certain limited issues of fact were found to exist as to that practice. The first documents (dated April 1974, see Exhibit G annexed hereto) relating to the existence of that plan were not produced to plaintiffs until after document production began in April 1975 and no representative of any team could be deposed as to this restraint until Samuel Schulman was deposed in June 1975. Further relevant testimony was taken and documents were produced as to this restraint after June and into September. Unlike the situation existing at the time of

the summary judgment motion, the record is now clear and "reveals the language [and] operation of the compensation plan" 389 F. Supp. at 891.

10. The NBA defendants' belated attempt to prevent plaintiffs from seeking to have the NBA s reserve compensation plan declared illegal is particularly ill-behooved. It would be unjust to permit them to oppose an amendment which seeks to include reference to that plan, in light of the facts that (a) that plan has already been the subject of this Court's preliminary ruling on illegality of the NBA practices (389 F. Supp. at 891, 896); (b) the plan has been made the express subject of the class notice already mailed to the class with Court approval (See Exhibit H annexed hereto); (c) there is no dispute that a close relationship exists between the operations of that plan and the other illegal practices attacked by plaintiffs (particularly the reserve clause); (d) Judge Ferguson recently held in the Cullen Bryant case that the Rozelle Rule in football was illegal (following Judge Swygert's earlier ruling in the Kapp case that the rule was illegal); (e) deposition testimony has been given by former Commissioner Kennedy and Assistant Commissioner Gourdine that they are not aware of any significant differences between the Rozelle Rule and the NBA's reserve compensation plan; and (f) it was the NBA defendants themselves who injected the reserve compensation plan into this case in their 1974 summary judgment motion. Were the NBA defendants' position adopted, plaintiffs would be required to file a new action alleging this new restraint (together with their player salary exchange claims as set forth below). That would create an unnecessary burden on all concerned, since all the restraints are interrelated and stem from a single set of facts and motivation.

B. Exchange of Player Salary Information

11. Unknown to the plaintiffs, the NBA adopted a practice of disseminating and exchanging salary information of all players

among all NBA teams. The purpose of that practice as admitted in the NBA defendants' own documents is to keep players' salaries down (See letter of Paul Snyder, owner of the Buffalo team-defendant annexed hereto as Exhibit I). All competing teams have requested and received such information (See letter of Commissioner Kennedy annexed hereto as Exhibit J), and for the same purpose competing teams have asked for and received additional information such as the salaries of the "10 best forwards" and "21 best guards" in the NBA (See documents from the NBA office annexed hereto as Exhibit K).

12. Again, plaintiffs were completely unaware of the NBA defendants' player salary exchange practices until well after discovery had commenced. Documents relating thereto have been produced in stages by the NBA defendants; for example, the "21 best guards" document (Exhibit K) was not produced until August.

13. Accordingly, plaintiffs have not engaged in any delay in attempting to amend the complaint. They were not able to depose any person from the NBA league office concerning either one of these two restraints until the deposition of Mr. Gourdine (Assistant NBA Commissioner) was taken by plaintiffs on August 19-20, 1975 and Mr. Kennedy's deposition by plaintiffs was commenced on September 19, 1975. Moreover, as noted above, I have been requesting the NBA defendants' consent to the amendment for nearly two months, and plaintiffs would have made this motion in August had I not been led to believe a motion would be unnecessary.

14. The NBA defendants' contention that the pleading of these two restraint claims "would involve additional work" is without substance. Nowhere has counsel for the NBA attempted to specify even the smallest amount of extra work which would result from the proposed amendment. The facts are that (a) plaintiffs have substantially completed their deposition taking; (b) plaintiffs have not added nor will add a single deposition witness to already existing schedules to ask any questions about these restraints and (c) plaintiffs do not intend to use any

other type of discovery device in relation thereto.. I have so informed counsel for the NBA defendants. In addition, plaintiffs already have asked questions relating to these restraints at all depositions already taken by plaintiffs, counsel for the NBA defendants have already prepared their clients prior to such depositions about these restraints and the NBA defendants themselves have used such subject matter in the depositions they have taken thus far of plaintiffs, asking them dozens of questions with respect to both the NBA's reserve compensation plan and the exchange of players' salary information. In light of these facts no "additional work" is left to be done in discovery.

15. Since the NBA defendants have failed to substantiate their claim of "additional work" or to show prejudice, which is the only justifiable ground for denying an amendment, the NBA defendants cannot be heard to complain about the addition of the new allegations concerning these two restraints.

16. Were the position of the NBA defendants adopted, plaintiffs would be required on behalf of themselves and the class to file a new action alleging these two restraints as violations and then seek to consolidate that new action with this pending action because they are intimately interrelated. Such a procedure would be a wasteful, time consuming and unnecessary exercise for plaintiffs and the Court, and should not be required.

Class Definition

17. Plaintiffs also seek to amend the complaint in order to conform the class definition (Second Amended Complaint ¶10) to that set forth in this Court's orders of February 14, 1975 and September 15, 1975, as reflected in the already mailed class notice. Surely the NBA defendants' cannot object to this revision on any ground of delay, surprise or prejudice, particularly since the parties together agreed on the class definition before submission of the class notice to the Court.

The New NBA Defendants

18. Shortly after the filing of the existing first amended complaint, the NBA granted a new franchise to the New Orleans Professional Basketball Club, and some months later, the then existing Detroit franchise was sold to a new ownership group, the Detroit Pistons Basketball Club. As a result of having entered the NBA and agreeing to abide by the rules, regulations and practices challenged in the present complaint, these two new entities have joined the NBA league conspiracy and therefore should properly be joined as parties defendant in this action. Again, this amendment will cause no prejudice to the NBA defendants, particularly since the same counsel now represents and has appeared already in this action on behalf of one of those two new entities -- New Orleans -- as a defendant on the ABA's crossclaims and there is no dispute that the other new entity -- Detroit -- will be represented by the same counsel. Again, to deny plaintiffs' motion would only force plaintiffs to institute a separate but identical action against these two new NBA members, and seek immediate consolidation with this case, an obvious waste of the parties' and this Court's time and effort.

Miscellaneous Changes

19. The only other revisions proposed by the Second Amended Complaint are strictly of a housekeeping nature. They are made solely to correct the existing complaint and conform it to new facts disclosed in discovery, to the passage of time, and to this Court's prior rulings. These miscellaneous revisions are also described in detail in my September 24, 1975 letter to Mr. Stern (Exhibit C) and fall into five categories: (1) numbering changes; (2) correcting typographical errors; (3) time conforming revisions; (4) additional specifications as to certain allegations; and (5) deletion of State and common

law counts (those which this Court dismissed in 389 F. Supp. at 880). None of these changes involves a matter of substance and plainly defendants cannot be prejudiced by permitting the amendment.

Conclusion

20. For the foregoing reasons, and in light of the direction in Rule 15(a) that leave to amend should be freely granted, it is respectfully requested that this Court grant plaintiffs leave to amend the existing complaint in the manner requested.

Peter Gruenberger

Sworn to before me this
17th day of October, 1975

Notary Public

Commission expires March 30, 1976

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, WILLIAM BRADLEY, JOE CALDWELL, ARCHIE CLARK, MEL COUNTS, JOHN HAVLICEK, DONALD KOJIS, JON McGLOCKLIN, McCOY McLEMORE, THOMAS MESCHERY, JEFFRY MULLINS, WESLEY UNSELD, RICHARD VAN ARSDALE and CHESTER WALKER, individually and as representatives of all present and future active players in the National Basketball Association,	70 Civ. 1526 (RLC)
Plaintiffs,	
-against-	SECOND AMENDED AND SUPPLEMENTAL CLASS ACTION COMPLAINT
NATIONAL BASKETBALL ASSOCIATION, a joint venture, MADISON SQUARE GARDEN CENTER, INC., MADISON SQUARE GARDEN CORPORATION, MILWAUKEE PROFESSIONAL SPORTS & SERVICES, INC., THE CAPITAL BULLETS BASKETBALL CLUB, INC. (formerly THE BALTIMORE BULLETS BASKETBALL CLUB, INC.), RKO ENTERPRISES, INC., KINGS PROFESSIONAL BASKETBALL CLUB, INC. (formerly CINCINNATI BASKETBALL CLUB COMPANY), BOSTON CELTIC BASKETBALL CLUB, INC. (formerly TRANS NATIONAL COMMUNICATIONS, INC.), DETROIT PISTONS BASKETBALL COMPANY (formerly ZECKENDORF CORPORATION), ATLANTA HAWKS BASKETBALL, INC., CALIFORNIA SPORTS, INCORPORATED, THE CHICAGO PROFESSIONAL BASKETBALL CORPORATION, PHOENIX PROFESSIONAL BASKETBALL CLUB, GOLDEN STATE WARRIORS (formerly SAN FRANCISCO WARRIORS), SEATTLE SUPERSONICS CORPORATION, TEXAS SPORTS INVESTMENTS, INC. (formerly SAN DIEGO BASKETBALL CLUB), BUFFALO BRAVES, INC., CLEVELAND PROFESSIONAL BASKETBALL COMPANY, PRO BASKETBALL, INC., NEW ORLEANS PROFESSIONAL BASKETBALL CLUB and AMERICAN BASKETBALL ASSOCIATION,	
Defendants.	

Plaintiffs, by their attorneys, for their complaint herein allege upon information and belief, except as to paragraphs 1-5, 9-17, 19, 23-25, 37-42, 49 and 52-54, which are alleged upon knowledge, as follows:

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COUNT ONE, AS TO ALL DEFENDANTS
EXCEPT AMERICAN BASKETBALL ASSOCIATION

JURISDICTION AND VENUE

1. This claim arises and is brought under Sections 4 and 16 of the Clayton Act (15 U.S.C. §§ 15 and 26) to recover treble damages and the costs of suit, including reasonable attorneys' fees, for violation by defendants of Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1 and 2), and to enjoin defendants from continuing hereafter to commit such violations.

2. Jurisdiction is vested in this Court by virtue of 28 U.S C. §§ 1331 and 1337.

3. Each defendant transacts business or is found or has an agent within this District, and the unlawful activities complained of were and are being carried on in part by defendants within this District.

THE PARTIES

4. This action is brought on behalf of the approximately 160 professional basketball players who were at the time this action was originally commenced all of the current active players in the professional major basketball league known as the National Basketball Association (the "NBA"), and on behalf of those players who since that date became active players in the NBA, and those players who in the future will become active players in the NBA prior to a final judgment in this action.

5. Plaintiffs William Bradley, Joe Caldwell, Archie Clark, Mel Counts, John Havlicek, Donald Kojis, Jon McGlocklin, McCoy McLemore, Thomas Meschery, Jeffry Mullins, Oscar Robertson, Westley Unseld, Richard Van Arsdale and Chester Walker are or were active players with, and each was, at the time this action

was commenced, the elected player representative of one of the then 14 clubs in the NBA.

6. Defendant NBA is a joint venture which operates a major professional basketball league in the United States consisting of 18 members which own and operate professional basketball clubs located in 18 different home cities in the United States under franchise from the NBA. The NBA is found within this District, maintaining its principal office at 2 Pennsylvania Plaza, New York City.

7. The NBA member clubs are owned and operated for a profit by the following defendants, each of which is a corporation except where noted, and is found or transacts business or is doing business within this District:

Defendant Club Owners	State of Organization or Incorporation	Club Name
Madison Square Garden Corporation and Madison Square Garden Center, Inc.	Michigan	New York Knickerbockers
Milwaukee Professional Sports & Services, Inc.	Wisconsin	Milwaukee Bucks
The Capital Bullets Basketball Club, Inc. (formerly The Baltimore Bullets Basketball Club, Inc.)	Maryland	Capital Bullets (formerly Baltimore Bullets)
Riko Enterprises, Inc.	Pennsylvania	Philadelphia 76ers
Kings Professional Basketball Club, Inc. (formerly Cincinnati Basketball Club Company)	Ohio	Kansas City Kings (formerly Cincinnati Royals)
Boston Celtics Basketball Club, Inc. (formerly Trans National Communications, Inc.)	Massachusetts	Boston Celtics

Detroit Pistons Basketball Company (a partnership) (formerly Zollner Corporation)	Michigan	Detroit Pistons
Atlanta Hawks Basketball, Inc.	Georgia	Atlanta Hawks
California Sports, Incorporated	California	Los Angeles Lakers
The Chicago Professional Basketball Corporation	Illinois	Chicago Bulls
Phoenix Professional Basketball Club (a partnership)	Arizona	Phoenix Suns
Golden State Warriors (a partnership) (formerly San Francisco Warriors)	California	Golden State Warriors (formerly San Francisco Warriors)
Seattle Supersonics Corporation	Washington	Seattle Supersonics
Texas Sports Investments, Inc. (formerly San Diego Basketball Club, a partnership)	Texas	Houston Rockets
Buffalo Braves, Inc.	New York	Buffalo Braves
Cleveland Professional Basketball Company	Ohio	Cleveland Cavaliers
Pro Basketball Inc.	Oregon	Portland Trailblazers
New Orleans Professional Basketball Club (a partnership)	Louisiana	New Orleans Jazz

8. Michael Burke, Ned Irish, William Alverson, Abraham Pollin, Irving Kosloff, Joseph Axelson, Irving Levin, Robert J. Schmertz, Jack Waldron, William Davidson, Fred Zollner, John Wilcox, Thomas Cousins, Donald Cooke, Jack Kent Cooke, William Wirtz, Phillip T. Klutznick, Elmer Rich, Richard Bloch, Franklin Mieuli, Samuel Schulman, Raymond Patterson, Robert Breitbard, Paul Snyder, Nicholas Mileti, Lawrence Weinberg, Herman Sarkowsky

and Sam Battistone are all former or present officers or representatives of the management of one of the aforesaid defendant club owners (in the order of the clubs as set forth in paragraph 7 above), and either at the time this suit was instituted or at present collectively constitute or constituted the total membership of the Board of Governors of the NBA. The Board of Governors is a formal group of the NBA club owners which creates policy for and controls the affairs of the NBA.

CLASS ACTION

9. Plaintiffs are representatives of a class as defined by Rule 23 of the Federal Rules of Civil Procedure and bring this action on behalf of themselves and the entire class as described in paragraph 10 below (hereinafter sometimes referred to as the "plaintiff players").

10. The class is comprised of all the players who (1) were on the active list of or under contract to a team in the NBA as of or since April 16, 1970 and who played at least one regular season or play-off game in the NBA during or since the basketball season which included April 16, 1970 and (2) in the future play at least one such game for a team in the NBA prior to the date of a final judgment in this action.

11. The class is so numerous and geographically so widely distributed that joinder of all members is impracticable. There are questions of law or fact common to the class. The claims of the representative parties are typical of the claims of the class and the representative plaintiffs will fairly and adequately protect the interests of the class.

12. Each player is, has been or, if a future player,

will be a signatory to a player's contract with one of the defendant clubs. Except for provisions as to individual compensation and other variations which do not materially affect this action, the contracts are substantially identical throughout the NBA. Moreover, each player is, has been or, if a future player, will be subject to uniform agreements, rules, regulations and practices among defendants, which are, have been or will be uniformly imposed upon each class member by defendants.

13. The prosecution of separate actions by individual members of the class would create the risk of:

(a) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

(b) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

14. In construing and enforcing their uniform agreements, rules, regulations, and practices, and in taking and planning to take the actions described in COUNT THREE hereof, the defendants have acted, refused to act or will act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

15. The questions of law and fact common to the members of the class predominate over any questions affecting only individual members, and the class action is superior to other available means for the fair and efficient adjudication of the controversy.

NATURE OF TRADE AND COMMERCE

16. The primary business in which the defendants are engaged is the public exhibition of the individual and collective professional basketball talents of plaintiff players. The players are, with rare exception, graduates of the ranks of college basketball who are signed to play for one of the defendant clubs, and whom defendants have described in the standard NBA player's contract as possessing extraordinary and unique skill and ability as basketball players.

17. Defendants' business of exhibiting major league professional basketball involves substantial volumes of interstate trade and commerce, including the following interstate activities: travel; communication; purchase and movement of equipment; broadcasts; telecasts; advertisements; promotions; sales of tickets and concession items; and negotiations for all of the above.

18. Defendants' aforesaid interstate transactions involve collective annual expenditures and receipts of multi-millions of dollars.

19. The NBA for many years has been the sole or dominant major professional basketball league. Major league professional basketball is a distinct market covering the United States, which is to be distinguished from other sports and from college or minor league professional basketball for many reasons, including: the rules of the sport and the season during which it is played;

the talents and rates of compensation of the players, for whom playing is their full-time profession; the nature and amounts of trade and commerce involved and the appeal to and reaction of the public, both as spectators and as home viewers and listeners on television and radio.

20. Since its inception in or about 1946, the NBA (including its predecessor leagues) and the other defendants and their predecessors have engaged in a concerted plan, combination or conspiracy to monopolize and restrain the aforesaid trade and commerce in major league professional basketball. The structure of major league professional basketball and the NBA as the sole or dominant major professional league exists and has been perpetuated through various written and tacit agreements and concerted practices and activities among defendants designed: (i) generally to control, regulate and dictate the terms upon which professional major league basketball shall be played in the United States, and (ii) specifically to eliminate competition with respect to the acquisition, allocation, employment and compensation of NBA players. The NBA players have been forced either to accept the anticompetitive conditions so imposed upon them or to risk forfeiting their right to earn their livelihood as professional basketball players and thus depriving them of the opportunity to exploit fully their professional talents.

21. The source of supply of basketball talent is found almost exclusively in the ranks of college players. The NBA and the other defendants, through a series of express and/or implied agreements, rules, regulations and practices, have

developed the so-called college "player draft" which is designed to divide the market in this source of supply. Under the player draft, each defendant club is given the right to choose specific college players with whom it wishes to negotiate. This right is exclusive, in that if a college player for any reason does not wish to negotiate with or play for the defendant club which "owns" the rights to him, he may not negotiate with or play for any other NBA club.

22. Every college player who agrees to sign with one of the NBA clubs subsequent to the player draft, and every already established player each year, must sign a contract entitled "National Basketball Association - Uniform Player Contract" (the "Uniform Contract"); a copy of the form which was used in 1970 is annexed hereto as Exhibit A. The rules of the NBA require that only the Uniform Contract shall be used by each club in signing all players. Although there are a few exceptions to this rule, the few players who are not bound by all of the written anticompetitive terms of the Uniform Contract are nevertheless injured by the anticompetitive agreements, rules, regulations and practices concertedly imposed upon all players by defendants.

23. Each Uniform Contract must be filed with the Commissioner of the NBA, who has the power to veto any player's contract. The Commissioner, together with the Board of Governors, is empowered to, and does, unilaterally impose fines on players and teams.

24. The Uniform Contract provides, inter alia that:

(a) the player shall play basketball only for his club or its assignees until "sold" or "traded";

(b) the club has the absolute right against the will of a player to sell, exchange, assign or transfer the Uniform Contract on the same terms to another club; and

(c) if the player refuses to play for his club, the club may either terminate the Uniform Contract or seek an injunction to prevent the player from playing basketball for anyone else.

25. The Uniform Contract also contains the so-called "reserve" clause. Under the "reserve" clause, if a player refuses to sign the Uniform Contract for the next playing season, the Uniform Contract is unilaterally deemed by the club to be renewed and extended for the period of one year, upon the same terms and conditions, except that at the time this action was originally commenced the NBA club had the right unilaterally to reduce the player's compensation by 25%.

26. The "reserve" clause was created by defendants, who construed and attempted to enforce the clause as a perpetual option or right of renewal in favor of the NBA clubs so as to bind the player to one club for his entire playing career. Under the Uniform Contract, the club has the express right unilaterally to keep renewing the Uniform Contract for one year for every year so long as the player refuses to execute the Uniform Contract.

27. By agreement, rule, regulation and practice no NBA club may or will negotiate with a player who (i) has signed the Uniform Contract to play for another club, (ii) has refused to sign the Uniform Contract tendered by such other club and is thus under "reserve" to that club or (iii) is not playing for such other club but is on that club's draft list, voluntary retired list, suspension list, military service list, disabled or injured

EDITOR'S NOTE

Pages 580 through 585 were missing at time of filming. If, and when obtained, a corrected fiche will be forwarded to you.

However, the language of the reserve clause which permits the continuous renewal of an unlimited number of options was not changed.

43. Also following commencement of this action, the NBA officially announced for the first time the existence of a "reserve compensation plan". Under that plan, no NBA team may freely negotiate or execute a contract with a player who has completed the entire term (including all renewal or option periods) of his contract with another NBA team, unless the new team pays compensation (in the form of money, and/or players and/or draft selections) to the player's old team. The level of such compensation can be and is set by the player's former team or the NBA Commissioner in a manner that prevents competition for the player's services. Thus, no player can negotiate freely with a new team for his services, even after his old team's renewal or option rights under the reserve clause have totally expired.

44. The existence, imposition and enforcement of the reserve compensation plan, coupled with an option or renewal right of either one or more than one year's duration, has the identical purpose and effect as a perpetual "reserve" right in favor of the NBA clubs. This reserve system effectively binds a player to one club for his entire career, since it prevents or discourages other clubs from bidding for such player's services and forecloses a player from competitively negotiating a contract with the same or a different NBA team.

45. Even if the reserve clause contained in the Uniform Contract (either with or without the reserve compensation plan) is not deemed to be a perpetual right of option or renewal, any construction and enforcement of the "reserve" clause by

limiting it to a one-year (or other period) option would nevertheless violate Sections 1 and 2 of the Sherman Act. Such a limited construction would still bind each player involuntarily to a defendant NBA club for one year (or other period) after the term of the Uniform Contract.

46. By virtue of the same combination or conspiracy alleged above in COUNT ONE, no other NBA club would negotiate with or employ a player during this less than perpetual option period. Any player who would seek to negotiate with another NBA club after expiration of such one-year (or other) option period, and any such other NBA club which agreed to negotiate with such player, would be subjected to the same boycott, blacklist, concerted refusal to deal or other penalty customarily imposed by defendants to enforce their combination or conspiracy to monopolize and restrain the aforesaid trade and commerce in professional major league basketball. Thus, in the event the "reserve" clause is construed to mean a one year (or any other period), rather than a perpetual, right of option or renewal, a player would still be foreclosed from dealing with any other NBA club for his lifetime.

47. However, after expiration of such one year or other period, a player could seek to negotiate with a rival professional basketball league. The existence of a rival league would thus enable a player to earn a livelihood in professional basketball, since under such limited construction of the "reserve" clause, the player might have an available escape route from the anticompetitive structure of the NBA. Moreover, so long as such a rival league flourished, the players who signed with teams in such league would not be forced to seek a return to the

NBA and be faced with its policies of boycott, blacklist and concerted refusal to deal.

48. Beginning with the advent of the ABA in 1967 and continuing to the present, the defendants have unlawfully combined or conspired to preserve their monopoly position and enhance the restraints of trade and commerce in professional major league basketball by using diverse predatory practices to destroy the ABA. All such attempts to foreclose competition from the ABA to date have failed. After a slow start, the ABA began to flourish as an independent rival league.

49. As a result of the competition fostered by the continued independent existence of the ABA, which has provided the potential escape route for NBA players, certain NBA clubs have begun to increase the compensation of certain of the NBA players and prospective players above the artificially suppressed compensation levels in existence prior to the advent of competition from the ABA. The mere threat of taking this escape route by some NBA players has led to instant increases in their compensation.

50. Having failed to destroy the ABA, defendants have combined or conspired in further violation of Sections 1 and 2 of the Sherman Act to foreclose competition from the ABA by means of an agreement with the ABA to effect a merger, consolidation, acquisition or other combination of the two leagues (hereinafter referred to as the "merger"). Such a merger would have the purpose and effect of eliminating the ABA as the independent competitive force hereinbefore alleged.

51. In furtherance of such combination or conspiracy, the defendants have taken affirmative steps to eliminate competition from the ABA, even prior to the merger of the two leagues. Defendants entered into a non-competition agreement between the leagues and their respective clubs, pending effectuation of the merger, and engaged in secret negotiations with the ABA to effectuate an imminent merger of the leagues.

52. The effects of the non-competition agreement and any eventual merger with the ABA will be to eliminate the salutary consequences, described in paragraphs 47 and 49 above, of an independent ABA and to magnify the existing anti-competitive effects of the defendants' combination or conspiracy as alleged above.

53. Plaintiffs repeat and allege the allegations contained in paragraphs 38 through 40 above.

COUNT THREE, AS
AGAINST ALL DEFENDANTS

54. Plaintiffs repeat and reallege the allegations contained in paragraphs 3 through 37, 39, 40 and 42 through 52 above.

55. Defendant ABA is a corporation organized under the laws of the State of Delaware, and is found or transacts business or is doing business within this District.

56. The ABA operates a major professional basketball league in the United States, in competition with the NBA, which consists of 10 members which own and operate professional basketball clubs located in 10 different home cities in the United States under franchise from the ABA.

57. Defendants' plan and scheme to effectuate a non-competition agreement and merger between the NBA and ABA constitutes a combination or conspiracy in restraint, and each overt act of defendants to consummate the same constitutes a restraint, of trade and commerce in professional major league basketball in violation of Section 1 of the Sherman Act, and constitutes an attempt to monopolize and a combination or conspiracy to monopolize, and if consummated would constitute monopolization, of such trade and commerce in violation of Section 2 of the Sherman Act.

58. The NBA and ABA are the sole competitors in professional major league basketball, which is a highly concentrated market in the United States. Consummation of the merger would eliminate all actual and potential competition between the NBA and ABA, including competition in the acquisition, allocation and employment of plaintiff players and of all prospective major league professional basketball players. Effectuation of the non-competition agreement would eliminate all such actual and potential competition prior to a formal merger.

59. Consummation of the merger would give the NBA control of 100% of the market of professional major league basketball, and thus permit defendants freely to continue the unlawful practices alleged above in COUNTS ONE and TWO.

60. Consummation of the merger and effectuation of the non-competition agreement should be preliminarily and permanently enjoined, since the former will cause and the latter is causing irreparable injury to plaintiff players, for which there is no adequate remedy at law.

WHEREFORE, plaintiffs demand judgment against defendants, as follows:

1. With respect to the first and second counts:

(a) declaring defendants' combination or conspiracy to be unlawful under Sections 1 and 2 of the Sherman Act;

(b) preliminarily and permanently enjoining defendants from continuing to violate Sections 1 and 2 of the Sherman Act by means of the acts alleged herein or by any other means which would prevent plaintiff players from freely negotiating with any professional basketball club of their choice when they enter the NBA and at the end of their current contracts, without giving effect to any alleged draft right, player list right, option or renewal right contained in the "reserve" clause, or the NBA's so-called reserve compensation plan;

(c) for treble the amount of damages suffered by plaintiffs as a result of the violations of the Sherman Act alleged herein; and

(d) for the costs of this action and reasonable attorneys' fees;

2. With respect to the second and third counts:

(a) declaring defendants' plan and scheme, and all steps taken pursuant thereto, to effectuate (i) a merger, consolidation, acquisition or combination by any means, by or between the NBA and ABA or its member clubs, and/or (ii) a non-competition agreement between

the NBA and ABA or their respective clubs, and such agreement itself, to be unlawful under Sections 1 and 2 of the Sherman Act; and

(b) preliminarily and permanently enjoining defendants, their agents, servants, officers, employees, attorneys and all persons acting in concert with them from taking any steps in furtherance of an attempt to effectuate or consummate any such non-competition agreement, merger, consolidation, acquisition or combination;

(c) for the costs of this action and reasonable attorneys' fees.

3. Such other and different relief as may to the Court seem just and proper.

Dated: New York, New York
October , 1975

Peter Gruenberger
A Member of the Firm of
WEIL, GOTSHAL & MANGES
767 Fifth Avenue
New York, New York 10022
(212) 758-7800

NATIONAL BASKETBALL ASSOCIATION
UNIFORM PLAYER CONTRACT
(Revised Form 8-29-68)

ATTACHED TO ORIGINAL
COMPLAINT

594

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. District Court
Filed
Mar 14 1974
S.D. of N.Y.

OSCAR ROBERTSON, et al., individually and as representatives of all present and future active players in the National Basketball Association,

Plaintiffs,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants.

70 Civ. 1526 (RLC)

STIPULATION - AMENDMENT AND SUPPLEMENT TO CLASS ACTION COMPLAINT

WHEREAS, at the time this action was commenced the then fourteen member teams of the National Basketball Association ("NBA") were named as defendants; and

WHEREAS, since the commencement of this action certain of such fourteen teams of the NBA have changed ownership and/or shifted location and three new member teams of the NBA have come into existence, making the total number of NBA member teams seventeen; and

WHEREAS, since the commencement of this action the number of member teams in the defendant American Basketball Association has been reduced from eleven to ten; and

WHEREAS, the parties hereto have stipulated that all individual defendants originally named except Ned Irish, be dismissed from the action and they desire now to correct the omission of Mr. Irish from that stipulation of dismissal; and

WHEREAS, the present defendants in this action have agreed to permit plaintiff to file an amended and supplemental complaint so as to add as parties the three added member teams and the new entities arising by changes in ownership or of location, and to dismiss the action as to Mr. Irish, upon the terms and conditions set forth herein;

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties herein that:

1. Pursuant to Rule 15(a) and (d) of the Federal Rules of Civil Procedure, the complaint be and the same is hereby amended and supplemented in the following particulars only:

(a) The full caption of the case shall be amended so as to read:

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, WILLIAM BRADLEY, JOSEPH CALDWELL, ARCHIBALD CLARK, MELVIN COUNTS, JOHN HAVLICEK, DONALD KOJIS, JON MCGLOCKLIN, MCCOY MCLEMORE, THOMAS MESCHERY, JEFFREY MULLINS, WESTLEY UNSELD, RICHARD VAN ARSDALE and CHESTER WALKER, individually and as representatives of all present and future active players in the National Basketball Association,

Plaintiffs,

-against-

NATIONAL BASKETBALL ASSOCIATION, a joint venture, MADISON SQUARE GARDEN CENTER, INC., MADISON SQUARE GARDEN CORPORATION, MILWAUKEE PROFESSIONAL SPORTS & SERVICES, INC., THE CAPITAL BULLETS BASKETBALL CLUB, INC. (formerly THE BALTIMORE BULLETS BASKETBALL CLUB, INC.), RIKO ENTERPRISES, INC., KINGS PROFESSIONAL BASKETBALL INC. (formerly CINCINNATI BASKETBALL CLUB COMPANY), BOSTON CELTIC BASKETBALL CLUB, INC. (formerly TRANS NATIONAL COMMUNICATIONS, INC.), ZOLLNER CORPORATION, ATLANTA HAWKS BASKETBALL, INC., CALIFORNIA SPORTS, INCORPORATED, THE CHICAGO PROFESSIONAL BASKETBALL CORPORATION, PHOENIX PROFESSIONAL BASKETBALL CLUB, GOLDEN STATE WARRIORS (formerly SAN FRANCISCO WARRIORS), SEATTLE SUPERSONICS CORPORATION, TEXAS SPORTS INVESTMENTS, INC. (formerly SAN DIEGO BASKETBALL CLUB), BUFFALO BRAVES, INC., CLEVELAND PROFESSIONAL BASKETBALL COMPANY and PRO BASKETBALL, INC., and AMERICAN BASKETBALL ASSOCIATION,

Defendants.

70 Civ. 1526 (RLC)

AMENDED AND SUPPLEMENTAL CLASS ACTION COMPLAINT

(b) The list of defendants in paragraph 7 shall be amended so as to read:

Defendant Club Owner	State of Organization or Incorporated	Club Name
Madison Square Garden Corporation and Madison Square Center, Inc.	Michigan	New York Knickerbockers
Milwaukee Professional Sports & Services, Inc.	Wisconsin	Milwaukee Bucks
The Capital Bullets Basketball Club, Inc. (formerly The Baltimore Bullets Basketball Club, Inc.)	Maryland	Capital Bullets (formerly Baltimore Bullets)
Riko Enterprises, Inc.	Pennsylvania	Philadelphia 76ers
Kings Professional Basketball, Inc. (formerly Cincinnati Basketball Club Company)	Ohio	Kansas City-Omaha Kings (formerly Cincinnati Royals)
Boston Celtics Basketball Club, Inc. (formerly Trans National Communications, Inc.)	Massachusetts	Boston Celtics
Zollner Corporation	Indiana	Detroit Pistons
Atlanta Hawks Basketball, Inc.	Georgia	Atlanta Hawks
California Sports, Incorporated	California	Los Angeles Lakers
The Chicago Professional Basketball Corporation	Illinois	Chicago Bulls
Phoenix Professional Basketball Club	Arizona	Phoenix Suns
Golden State Warriors (a partnership	California	Golden State Warriors (formerly San Francisco Warriors)

Defendant Club Owner	State of Organization or Incorporated	Club Name
Seattle Supersonics	Washington	Seattle Supersonics
Texas Sports Investments, Inc. (formerly San Diego Basketball Club, a partnership)	Texas	Houston Rockets (formerly San Diego Rockets)
Buffalo Braves, Inc.	New York	Buffalo Braves
Cleveland Professional Basketball Company	Ohio	Cleveland Caveliers
Pro Basketball Inc.	Oregon	Portland Trailblazers

(c) Paragraph 8 shall be amended, by deleting the description of the following named individuals as "Defendants" and by adding three names, so as to read as follows:

"8. Ned Irish, William Alverson, Abraham Pollin, Irving Kos[illegible]ff, Joseph Axelson, Robert J. Schmertz, Jack Waldron, Fred Zollner, John Wilcox, Thomas Cousins, Jack Kent Cooke, Phillip T. Klutznick, Elmer Rich, Richard Block, Franklin Mieuli, Samuel Shulman, Raymond Patterson, Robert Brietbard, Paul Synder, Nicholas Mileti and Herman Sarkowski are all former or present officers or representatives of the management of one of the aforesaid defendant club owners (in the order of the clubs as set forth in paragraph 7 above), and either at the time this suit was instituted or at present collectively constitute or constituted the total membership of the Board of Governors of the NBA. The Board of Governors is a formal group of the NBA club owners which creates policy for and controls the affairs of the NBA.

(d) The number "14" shall be amended so as to read "17" each time it appears in paragraphs 5, 6 and 10.

(e) The number "11" shall be amended so as to read "10" each time it appears in paragraph 52.

2. This action shall be dismissed as to defendant Ned Irish, without prejudice and without costs to any party.

3. Plaintiffs within twenty days of the entry of this stipulation order by this Court, shall cause a copy of the amended and supplemental complaint reflecting the changes set forth above to be served upon all parties which heretofore have appeared in this action by serving counsel of record and upon the new parties hereby added as defendants by service of process in accordance with applicable law.

Dated: New York, New York
March 8, 1974

WEIL, GOTSHAL & MANGES

By _____
A Member of the Firm
Attorneys for Plaintiffs
767 Fifth Avenue
New York, New York 10022
(212) 758-7800

SIMPSON, THACHER & BARTLETT

By _____
A Member of the Firm
Attorneys for Defendants
Madison Square Garden Center, Inc.
Madison Square Garden
Corporation and Ned Irish
1 Battery Park Plaza
New York, New York 10004
(212) 483-9000

599

ROTH, CARLSON & SPENGLER

By /Robert T. Carlson/
A Member of the Firm
Attorneys for Defendant
American Basketball Association
280 Park Avenue
New York, New York 10017
(212) 682-4444

PROSKAUER, ROSE, GOETZ & MENDELSOHN

By /George G. Gallantz/
A Member of the Firm
Attorneys for Defendant
National Basketball Association, et al.
300 Park Avenue
New York, New York 10022
(212) 593-9000

SO ORDERED: March 12, 1974

/Robert L Carter/
U.S.D.J.

[redacted] 600

MAILED DELY } By

W., G. & M.

September 24, 1975

David J. Stern, Esq.
Proskauer Rose Goetz
& Mendelsohn
300 Park Avenue
New York, New York 10022

Re: Robertson v. NBA

Dear David:

I am enclosing a proposed form of Second Amended Complaint. The main changes are to add parties and two claims (reserve compensation and player salary information exchange). I have also suggested some changes in language that seem to be called for based on the discovery had to date.

Please let me know your views on this before too long.

Here are the changes:

1. Caption -- change spelling of players' first names and add new Detroit and New Orleans.

2. Numbering changes in introduction paragraph.

3. ¶4 -- slight conforming change to correspond more to class notice.

4. ¶5 -- spelling changes.

5. ¶6 -- change 17 to 18 teams.

6. ¶7 -- Detroit and New Orleans changes, plus slight spelling and conforming changes.

7. Add Burke, Levin, Don Cooke, Davidson, W. Wirtz, Weinberg, Sarkowsky and Battistone as Board members.

8. ¶10 -- conform class designation to notice.

9. ¶13(b) -- typo change in "adjudications".

10. ¶22 -- change to reflect the fact that the form of Uniform Player Contract has changed since the institution of this lawsuit.

11. ¶25 -- change in last clause of last sentence to take account of your claim that it was not a perpetual reserve at least after September 2, 1971.

12. ¶26 -- in second sentence, change "According to defendants" to "Under the Uniform Contract."

13. ¶27 -- add reference to player lists.

14. New ¶28 -- player salary exchange which causes renumbering of all subsequent paragraphs.

15. ¶36(b)--- is new in part, picking up part of old ¶35(h), and ¶36(c) type change in "clause".

16. ¶36(d)(e) and (h)-- add reference to player lists.

17. ¶36(i)-- is new referring to tampering and fines.

18. ¶36(k) -- is new referring to exchange of player salary information.

19. ¶39 -- is changed to make the charge more specific.

20. ¶41 -- contains numbering changes.

21. ¶42 -- is new regarding the change of September 2, 1971.

22. ¶43 and ¶44 -- are new referring to the reserve compensation plan.

23. ¶45 -- contains language conforming it to ¶¶42-44.

24. ¶54 -- contains numbering changes.

25. We have eliminated the State Law counts.

26. The Wherefore clause has been changed to conform to other changes and deletions.

As we have discussed, I do not wish to make unnecessary motions to the Court. But if you cannot agree to the form of the amendment, let me know soon which way you want to go, I cannot avoid making the motion.

Sincerely,

PG/rh
Enclosure

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PROSKAUER ROSE GOETZ & MENDELSOHN
300 PARK AVENUE
NEW YORK, N.Y. 10022

TELEPHONE: (212) 593-9000

WRITER'S DIRECT DIAL NUMBER
593-9310

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WA[illegible]ENDELSOHN
ALF[illegible]APPEL
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L. ROBERT BATTERMAN
HOWARD L. GANZ
PAUL H. EPSTEIN
LAWRENCE J. ROTHENBERG

WILLIAM R. ROSE
(1875-1931)

JOSEPH M. PROSKAUER
(1930-1971)

NORMAN S. GOETZ
(1925-1972)

CABLE: ROPUT
TELEX: ITT 421178
WU 125352

October 3, 1975

Peter Gruenberger, Esq.
Weil, Gotshal & Manges
767 Fifth Avenue
New York, New York 10022

Re: Robertson v. NBA

Dear Peter:

I write in response to your letter of September 24, 1975 with respect to the proposed second amended complaint.

I believe that it was in early August that you first told us that you intended to amend your complaint to add the new Detroit and New Orleans entities as parties defendants and to add allegations about certain other NBA practices. Thereafter, I told you that you should prepare such an amended complaint and we would probably consent to the amendment.

Frankly, in light of certain information which became available to us during the three months of discovery that had occurred to that point, we were considering the assertion of claims against present and additional parties to the action.

However, as you know, Judge Carter has fixed a February 1, 1976 cut-off date for discovery and a May 3, 1976

trial date. Accordingly, we cannot consent to the filing of an amended complaint at what has become a relatively late stage in the litigation. If you desire to amend your complaint in the form proposed, I suggest you make an appropriate motion.

Sincerely,

David

David J. Stern

DJS:nb

605

MAILED
DEL'Y } By

W., G. & M.

October 6, 1975

David J. Stern, Esq.
Proskauer Rose Goetz
& Mendelsohn
300 Park Avenue
New York, New York 10022

Re: Robertson v. NBA

Dear David:

This is in response to your letter of October 3, 1975 regarding our proposed second amended complaint.

You will recall that it was not until late June that we uncovered in Sam Schulman's file the first and only document concerning the reserve compensation plan. Later, we uncovered the player salary exchange documents. We could not depose anyone from the NBA office about those practices until Si Gourdine's deposition was taken on August 19. Walter Kennedy was deposed as to these matters only three weeks ago for the first time, and as you know, we had him for one short day and have not finished as to these matters. Clearly, I was not going to make allegations without any basis in fact for them. The depositions and additional documents you have finally produced provide that basis in fact.

It seems incredible that you would agree to let the class notice go out, based upon the Court's approval, which notice contains reference to restraints but which restraints you will not agree should be the subject of an amendment.

It is obvious to me that since no new discovery will be required by our proposed amendment and that you were prepared to agree to an amendment without motion practice a few weeks ago -- as late as a September meeting in your office -- your new position is a stonewalling tactic, having nothing to do with the merits but designed simply to make life unbearable for all of us. I do not understand how Judge Carter's trial schedule, which you knew was imminent, would give you a basis for changing your mind and putting us all to the task of unnecessary work.

I pray that you will reconsider your position in light of the facts, Rule 15 F.R.C.P. and avoidance of the motion practice you are forcing me to undertake without reason.

Sincerely,

PG/rh

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PROSKAUER ROSE GOETZ & MENDELSOHN
300 PARK AVENUE
NEW YORK, N.Y. 10022

TELEPHONE: (212) 593-9000

WRITER'S DIRECT DIAL NUMBER
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WILLIAM R. ROSE
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JOSEPH M. PROSKAUER
(1930-1971)

NORMAN S. GOETZ
(1925-1972)

CABLE: ROPUT
TELEX: ITT 421178
WU 125352

October 7, 1975

Peter Gruenberger, Esq.
Weil, Gotshal & Manges
767 Fifth Avenue
New York, New York 10022

Re: Robertson v. NBA

Dear Peter:

This is in response to your letter of October 6, 1975, dealing with your proposed second amended complaint.

Your preference for a stipulation permitting you to amend the complaint, as opposed to your having to make a motion, is understandable. I have no quarrel with your attempts, as an advocate, to broaden the allegations of the complaint and to add new parties.

I would have hoped, apparently in vain, that you would understand my position that such an amendment would involve additional work to prepare this case for trial. I thus told you that I could not at this point in the litigation, consistent with my obligations to my clients, consent to such an amendment, and I am adhering to that position.

While your statement that my position is "incredible" merely amuses me, I am offended by your accusation that my position is a "stonewalling"tactic designed to make life unbearable for all of us. I have always discharged my duty of representing clients with great sensitivity to my obligations as an officer of the court and am happy to place before the scrutiny of the Court my firm's entire conduct of this

litigation, particularly the cooperative effort involved in discovery to date.

In light of your firm's similar good faith efforts in the conduct of this case, I am inclined to attribute your intemperate remarks to the press of a case which has lawyers at both of our firms working to the limit of their endurance, but I nevertheless felt it necessary to record my objection to those remarks.

Sincerely

David J. Stern

DJS:nb

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FAR NORTHWEST
INDUSTRIES OF AMERICA, INC.
221 WEST HARRISON STREET • SEATTLE, WASHINGTON 98119

April 12, 1974

Commissioner Walter Kennedy
National Basketball Association
Two Pennsylvania Plaza, Suite 2010
New York, New York 10001

Dear Walter:

In an effort to avoid any future misunderstandings with you and/or the league, I would appreciate your cooperation in advising me in writing as to the following:

1. Under what different circumstances is a player a "Free Agent"?

2. Is a team that signs a "Free Agent" subject to any imposition of a penalty from the league and/or Commissioner?

This request is being made because I believe there will be a few "Free Agents" offering their services. If such is the case, it may be that Seattle could possibly be interested, especially if it causes them not to jump to the ABA. I do not want to be confronted with a repeat performance of what happened with Brisker when you and the league conspired against Seattle and subjected us to tremendous expense in order to prove our complete innocence. Therefore, a direct reply would be appreciated. I hope you will not be ambiguous.

Very sincerely yours,

Samuel Schulman
SS/mh
cc: Zollie Volchok

01 20095

LOS ANGELES OFFICE • (213) 277-9715 • 1001 Century Park East • Los Angeles, Ca. 90067

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NATIONAL BASKETBALL ASSOCIATION
TWO PENNSYLVANIA PLAZA · SUITE 2010 · NEW YORK, N.Y. 10001 · 212-594-3000

OFFICE OF THE COMMISSIONER

April 26, 1974

Mr. Samuel Schulman
First Northwest Industries of America
1801 Century Park East, Suite 2301
Los Angeles, California 90067

Dear Sam:

This is in reply to your letter of April 12th.

First of all, I'm sorry that every dispute seems to you to arise out of a conspiracy. I can only assure you that I have never "conspired against Seattle" or anyone else.

I would like first to answer your question numbered 2. Assuming a player has signed an NBA Uniform Player Contract in its current form, then, upon the expiration of the contract's stated term, the team has an option to renew the contract for one year at no less than the same compensation as the last preceding season, provided that certain formalities -- such as contract tender by a certain date -- are complied with. If a team exercises its option, and the player plays during the option year without having signed a new contract, the player becomes a free agent at the expiration of the option season. He then has the right to bargain freely with all clubs and is free to sign with any NBA team.

The primary objective of the NBA is to present a schedule of basketball games among teams which, so far as possible, are competitive with one another on the basketball court. Therefore, whenever a player, at the expiration of his option year, signs with another NBA team, it has been and will be the duty of the two teams involved to assess the impact which that signing has upon that primary objective of the NBA. This includes assessing not only the immediate effect of the movement of a player from one team to another on each of the two teams and their respective players, but also the possibility that the uncompensated loss of a particular player might discourage the financial investments which teams in the NBA are expected to make in securing and developing talented basketball players.

.../...

01 20099

This system has worked well, and teams involved in such player movement have heretofore been able to resolve the compensation question without my participation. However, if a dispute over compensation between two NBA teams cannot be resolved between those two teams alone, the dispute can then be placed before me, in accordance with the provision of Paragraph 24(c) of the NBA Constitution that "The Commissioner shall have full, complete and final jurisdiction of any dispute involving two or more Members of the Association."

I should make clear that the procedures outlined above contemplate the Commissioner's participation only after (1) a player has been signed by a second team and (2) the two teams are unable to agree upon what, if any, compensation is required. Moreover, once a dispute has been submitted to me, an award of compensation would not be inevitable; it may be that in considering all relevant factors including those discussed above, I would award no compensation at all. It should also be understood that any award I make under such circumstances would in no event affect the validity of the contract between the player and his new team.

I have noted your use of the word "penalty." For the reasons I have already stated, any such award that I would make would not be, and would not be intended or designed to be, a penalty.

The answer to your question numbered 1 may be found in NBA By-Law 1.14 (page 103). I am simply not able to foresee every set of circumstances under which a player may become a free agent. If you have any specific case in mind other than the one I have assumed in answer to your question numbered 2, please give me the facts and I will try to give you an answer that at least I consider unambiguous.

Sincerely,

Walter Kennedy

WK/ch

cc/NBA Board of Governors

01 20094

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NOTICE OF PENDENCY OF CLASS ACTION

OFFICE OF THE CLERK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al.,	:	
Plaintiffs,	:	70 Civ. 1526 (RLC)
-against-	:	
NATIONAL BASKETBALL ASSOCIATION, et al.,	:	
Defendants.	:	

TO ALL PERSONS WHO ARE NOW OR AT ANY TIME HAVE BEEN ACTIVE PLAYERS FOR MEMBER TEAMS IN THE NATIONAL BASKETBALL ASSOCIATION SINCE THE PLAYING SEASON WHICH INCLUDED APRIL 16, 1970

Pursuant to Rule 23 of the Federal Rules of Civil Procedure, you are hereby notified:

There is now pending in this Court (before the Honorable Robert L. Carter) a civil action for money damages (trebled) and injunctive relief brought by present and former players in the National Basketball Association (the "NBA") based on alleged violations of the federal antitrust laws (Sections 1 and 2 of the Sherman Act). The violations alleged are agreements, combinations and conspiracies among the defendant professional basketball leagues and teams (as described below) to restrain competition for the services of professional basketball players in the form of (a) past and present intra-league restraints betw among the

NBA and its member teams, and (b) past and present inter-league restraints between and among the American Basketball Association (the "ABA"), the ABA's member teams, the NBA and the NBA's member teams.

The complaint filed in this action seeks an award of trebled money damages, injunctive relief, reimbursement of litigation costs and an award of attorneys' fees on behalf of the named plaintiffs and the members of the class (described below) against the NBA and certain of its member teams for injury caused by, and future injury that may result from, the alleged intra-league restraints. The intra-league practices challenged in the action include the college draft, the "reserve" or "option" clause, the NBA policy or practice under which one member team in the NBA is compensated by another NBA team when a player signs a contract with that other NBA team after the player achieves "free agent" status, boycotts, blacklists, Uniform Player Contracts and other alleged agreements among the NBA and its member teams. The complaint seeks the same relief against the NBA, certain of its member teams and the ABA (but not for money damages against the ABA) for injury caused by, and the future injury that may result from, the alleged restraints. The alleged inter-league restraints include the proposed 1970 and any other merger or combination between or among the NBA, its member teams, the ABA and its member teams, and any non-competition agreements between or among them.

The period for which damages are sought by the complaint on behalf of the named plaintiffs and each class member is April 16, 1966 through the date of a final judgment in this action.

The defendants have denied the material allegations of the complaint and have denied liability.

The named plaintiffs in this action are Oscar Robertson, William Bradley, Joseph Caldwell, Archie Clark, Mel Counts, John Havlicek, Donald Kojis, Jon McGlocklin, McCoy McLemore, Thomas Meschery, Jeffry Mullins, Westley Unseld, Richard Van Arsdale and Chester Walker.

On February 14, 1975, and September15, 1975 the Court entered orders under Rule 23 of the Federal Rules of Civil Procedure determining that: (1) this action shall be maintained as a class action under Rule 23(b)(1) of the Federal Rules of Civil Procedure; (2) the 14 above named plaintiffs will fairly and adequately represent the class; (3) this Notice should be sent to the class; and (4) the class on whose behalf this action is being maintained is as follows:

> All persons who (1) were on the active list of or under contract to a team in the NBA as of or since April 16, 1970 and who played at least one regular season or play-off game in the NBA during or since the basketball season which included April 16, 1970 and (2) in the future play at least one such game for a team in the NBA prior to the date of a final judgment in this action.

This notice is being sent to you in the belief that you may be a member of the above class of plaintiffs, whose rights will be affected by this litigation.

THIS NOTICE IS NOT TO BE UNDERSTOOD AS AN EXPRESSION OF ANY OPINION BY THIS COURT AS TO THE MERITS OF ANY OF THE CLAIMS OR DEFENSES ASSERTED BY PLAINTIFFS OR DEFENDANTS, but is sent for the sole purpose of informing you of the pendency of this litigation so that you may make appropriate decisions as to steps you may wish to take in relation to this litigation.

All opinions and rulings of the Court are a matter of records, and they, together with the pleadings and other papers filed in this action, are available for inspection in the office of the Clerk of this Court, or at the offices of Lawrence Fleisher, Esq., 15 Columbus Circle, New York, New York or at the office of the following counsel of record for the class representatives: Weil, Gotshal & Manges
767 Fifth Avenue
New York, New York 10022
(212) 758-7800

Attention: Ira M. Millstein or
Peter Gruenberger

(Such counsel will answer any inquiry regarding this action that you may have).

Each member of the class is hereby notified that:

(a) each member of the class will be represented by the above-named attorneys for the class representatives, unless an application is made as described in (c) below;

(b) each member of the class will be bound by an adjudication, whether favorable or unfavorable, on the merits of the issues to be litigated in this action;

(c) if any class member desires to be represented separately by counsel of his own choice at his own cost, he may (solely at his own cost) file an application to the Court for leave to intervene as a party plaintiff or otherwise become a party to the litigation; and

(d) members of the class will be subject to orders and notices of the Court, and by order of the Court certain members will be required on the motion of the NBA to produce documents and appear in person to give pre-trial deposition testimony.

This notice shall be sent on or about November 1, 1975 to each new class member, and sent on or about each November 1 thereafter prior to a final adjudication on the merits in this action to further new class members.

Dated: New York, New York
September 19, 1975

Clerk
United States District Court
Southern District of New York
Federal Courthouse
Foley Square
New York, New York 10007

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BUFFALO BRAVES

MEMBER NATIONAL BASKETBALL ASSOCIATION
MEMORIAL AUDITORIUM • MAIN AND TERRACE • BUFFALO, NEW YORK 14202

PAUL L. SNYDER
PRESIDENT

January 29, 1973

Mr. Walter Kennedy, Commissioner
National Basketball Association
2 Pennsylvania Plaza, Suite 2360
New York, New York 10001

Dear Walter:

I thought I would send you this letter with a copy to our various Governors, to confirm the conversation that we had in New York this past week.

During the three seasons that I have been a member of the National Basketball Association, two things have become very obvious:

1.) If the three expansion teams are going to continue drafting the top three or four college seniors each year, they are going to go bankrupt before they are able to build a winning team. It is very obvious that our three expansion teams, by drafting the top three or four college seniors each year, have had to bear the major part of the ridiculous rookie salaries that have been forced so high because of bidding between the two leagues If we are going to generate enough income to pay these very high salaries, we must be able to develop teams that are competitive with the rest of the NBA. A partial solution toward a more balanced league might be a professional draft whereby each team would freeze eight players and our teams be allowed to draft players from those players available in this professional draft (similar to the National Hockey League).

2.) I am concerned that the NBA has given so little help in making each of our NBA teams more aware of the competitive salaries of first and second round draft choices, both within the NBA and in fact, where possible, from the ABA. I believe that my team and in fact, several other teams, could have saved hundreds of thousands of dollars on some of our various player contracts had we been given more information on various player salaries throughout the league. I would like to put on the agenda for our next Governors Meeting the possibility of making the first and second round draft player salaries paid during the past two years available to each Owner, and if possible, have someone on your staff try to get this same information involving the ABA, in order to compile some sort of a guideline in dealing with agents representing this year's college players.

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I think we have made a lot of progress toward building a better League; however, we must develop a better Communication-Information-Financial system if we are to deal properly with the various player agents that have become so skilled at playing the NBA Owners against each other, and also the NBA against the ABA, where it is to their benefit. I suggest that if other Owners have additional suggestions, they forward them to your office in order that we make every effort to stabilize our NBA player salaries.

Sincerely,

Paul L. Snyder

Paul L. Snyder

PLS:sk

cc: All NBA Governors

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NATIONAL BASKETBALL ASSOCIATION
TWO PENNSYLVANIA PLAZA · SUITE 2360 · NEW YORK, N.Y. 10001 · 212-279-1535

OFFICE OF THE COMMISSIONER

February 2, 1973

Mr. Paul L. Snyder
Buffalo Braves
Memorial Auditorium
Main and Terrace
Buffalo, N.Y. 14202

Dear Paul:

This is in response to your letter of January 29, a copy of which was sent to the Board of Governors.

One or two owners, in addition to you, have spoken to me about the possibility of adopting a different kind of draft, possibly involving a professional draft similar to that of the National Hockey League. We are studying all of the implications of this matter. It is my intention to have a meeting of the Competition Committee within a reasonable period of time to implement our research.

I must say that I cannot agree that the "NBA has given us little help in making each of our NBA teams more aware of the competitive salaries of first and second round draft choices." You may recall that this was discussed previously at a Board meeting and it was agreed that the NBA office would give such information whenever asked. It also was agreed that this information should not be distributed in writing among the NBA teams. This office will be very happy to provide as much information as we have, whenever asked. As a matter of fact, most of the teams have been in constant touch with our office about such player salaries.

I look forward to seeing you at the Thursday meeting.

Sincerely,

01 25211

Walter Kennedy

WK/ch

cc/NBA Owners

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NATIONAL BASKETBALL ASSOCIATION

Memo To: Larry Weinberg

From: Simon P. Gourdine

Date: March 12, 1975

Subject: Salaries of 10 "best forwards" in the NBA.

Harry Glickman advised me that at your request he needs additional information relative to salaries of certain designated forwards in the NBA. Commissioner Kennedy consented to the release of the previous information on the ten highest paid forwards on the express condition that such information would be kept in the strictest confidence.

To further comply with your request, I have prepared the terms of the payout of the players listed below. These players are those who, in Harry Glickman's judgment, are the ten best forwards in the NBA.

1) SPENCER HAYWOOD - 5 year contract for total amount of $1,510,000. Contract begins 1973-74 and calls for cash payments of $152,000 per season for the first 4 seasons and $302,000 in the last season. Deferred Compensation is payable $100,000 per year beginning January 1, 1979 and extending through January 1, 1984. The contract is no-cut, and includes incentive provisions.

2) RICK BARRY - 4 year contract for total sum of $950,000. Contract begins with the 1974-75 season and calls for cash payments of $237,500 per season. It is not a no-cut contract.

3) BOB LOVE - 5 year contract with a total amount of $706,000. The contract begins in the 1972-73 season. It calls for cash payments of $70,000 for the 1972-73 season and $75,000 for each season thereafter. Deferred payments begin in 1979 and extend through 1992. The contract is no-cut for the first 4 years.

4) BOB DANDRIDGE - 4 year contract for the total amount of $600,000. Contract begins with the 1973-74 season and calls for cash payments of $80,000 for 1973-74, $110,000 for 1974-75, $135,000 for 1975-76, and $150,000 for 1976-77. Deferred Compensation is payable $45,000 in January 1978, $30,000 in January 1979, $25,000 in January 1980, and $25,000 in January 1981. In addition, player receives a $100,000 loan to be repaid in 8 annual installments beginning in October 1974. The contract is a no-cut contract for the first 3 seasons and contains incentive provisions.

5) JOHN HAVLICEK - 4 year contract for a total sum of $1,000,000. The contract begins with the 1972-73 season and calls for cash payments of $250,000 per season. It is a no-cut contract. Player also receives a $75,000 loan without interest with repayment beginning in 1975.

6) JIM MC MILLIAN - 5 year contract for a total sum of $1,000,000. The contract begins with the 1973-74 season and calls for cash payments of $150,000 for 1973-74, $165,000 for 1974-75, $180,000 for 1975-76,

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$195,000 for 1976-77, and $210,000 for 1977-78. Deferred Compensation payable $10,000 per year for 10 years beginning January 1988. It is not a no-cut contract.

7) STEVE MIX - 3 year contract for a total sum of $140,000. The contract begins with the 1973-74 season and calls for $30,000 in 1973-74, $45,000 in 1974-75, $60,000 in 1975-76. It is not a no-cut contract.

8) BILL BRADLEY - 1 year contract for a total sum of $300,000. Contract begins with the 1974-75 season and calls for a cash payment of $300,000 in that season. It is a no-cut contract.

9) RUDY TOMJANOVICH - 6 year contract for a total sum of $1,000,000. Contract begins with the 1973-74 season and calls for cash payments of $100,000 per season. The Deferred Compensation is payable $100,000 per year in the 1979-80 season through the 1982-83 season. It is a no-cut contract.

10) ELVIN HAYES - 5 year contract for a total sum of $1,010,000. The contract begins with the 1972-73 season and calls for cash payments of $100,000 per season. The Deferred Compensation is payable $100,000 per year commencing in October, 1977. This is a no-cut contract and the player also received a $10,000 bonus.

/gh.

Continental Council Only

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NATIONAL BASKETBALL ASSOCIATION
TWO PENNSYLVANIA PLAZA · SUITE 2010 · NEW YORK, N.Y. 10001 · 212-594-3000

DEPUTY COMMISSIONER

April 15, 1975

Mr. Harry Glickman
Portland Trail Blazers
Suite 320-Lloyd Building
700 NE Multnomah Street
Portland, Oregon 97232

Dear Harry:

I am responding to your letter of April 7 requesting information on the contracts of 21 NBA Guards. I have discussed your request with the Commissioner, and it is his opinion that your request is too broad. That is to say, he feels that information relative to ten Guards should suffice for your purposes.

Accordingly, I recommend that you amend your request to include those ten Guards in which you have some interest.

Sincerely yours,

Simon P. Gourdine

/gh

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623

OSCAR ROBERTSON, et al. v. NATIONAL BASKETBALL ASSOCIATION, et al.

70 Civ. 1526

ENDORSEMENT

Plaintiffs move pursuant to Rule ~~26c~~, F.R.Civ.P. and Rule 5g of the Civil Rules of this court for a protective order (1) requiring defendants to prepay plaintiffs' costs and expenses, including attorneys' fees, incurred in connection with defendants taking the depositions of 74 members of the class; 10 non-class member witnesses; Marvin Miller, Allan Eagleson and Edward Garvey; and (2) to bar the taking of the latter three depositions. Defendants move pursuant to Rule 28(b) for letters rogatory to enable them to take the depositions of Miller, Eagleson, and Garvey.

Plaintiffs' motion is denied as to the members of the class. Plaintiffs are suing on behalf of a class and must bear their own expenses in the taking of depositions of those persons they represent. The defendants, however, are ordered to cooperate with plaintiffs in scheduling the depositions at times and places convenient to plaintiffs' counsel.

Plaintiffs' motion is granted in respect of the 10 non-members of the class, and Marvin Miller, Alan Eagleson and Edward Garvey. Defendants are ordered to prepay the necessary costs of first-class round-trip air or railroad fare, expenses, and $100 a day required for one attorney for plaintiffs to be in attendance at these depositions.

Plaintiffs' motion to prohibit defendants from taking the depositions of Miller, Eagleson and Garvey is denied. While I can hardly conceive of circumstances which would make the testimony of these gentlemen relevant at trial, there is no need to make that determination in a vacuum. Since I am dubious about the relevance of any evidence secured

from these sources and consequently about its admissibility at trial, permission for the issuance of letters rogatory will be deferred until defendants represent to the court that they are close to the end of their pretrial discovery.

Plaintiffs move to further amend the complaint to allow references to be made (1) to the reserve clause compensation plan, and (2) to the practice among the NBA defendants of exchanging information about players' compensation; (3) to modify the definition of the class to conform with the court's decision and the notice to the class agreed by counsel; (4) to add two new members of the NBA as defendants--The New Orleans Professional Basketball Association, a new club, and Detroit Pistons Basketball Association, the new owners of the Detroit Pistons; and (5) to correct typographical errors, etc.

The reserve clause compensation plan is surely already in this case and was referred to in the papers and in the opinion on the motion for summary judgment. The exchange among the owners of information concerning players' compensation recently came to plaintiffs' knowledge pursuant to discovery. Evidentiary proof as to both matters is clearly admissible at trial even without amendment to the complaint--the compensation plan, because defendants introduced it into the case and relied on it in re the motion for summary judgment and the exchange of information about players' salaries, because this may be part of the proof in the claim of an unlawful combination. The amendment to modify the class action definition will merely conform the pleadings to present what is actually in the case in light of the court's orders and notice to the class. The amendment to bring in the new NBA members is certainly appropriate, and the amendment to correct typographical errors seems in order. Accordingly, plaintiffs' motion to amend the complaint is granted.

It is SO ORDERED.

Dated: New York, New York
November 12, 1975

Robert L. Carter

ROBERT L. CARTER
U.S.D.J.

624(a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al.,

Plaintiffs,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants.

70 Civ. 1526 (RLC)

AMERICAN BASKETBALL ASSOCIATION, et al.,

Cross-claimants,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Cross-defendants.

PLAINTIFFS'S MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION TO AMEND THE COMPLAINT

Of Counsel:

Peter Gruenberger
James M. Quinn

WEIL, GOTSHAL & MANGES
767 FIFTH AVENUE
NEW YORK, N.Y. 10022

624(b)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al.,

Plaintiffs,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants,

70 Civ. 1526 (RLC)

AMERICAN BASKETBALL ASSOCIATION, et al.,

Cross-claimants,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Cross-defendants.

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION TO AMEND THE COMPLAINT

Preliminary Statement

Plaintiffs submit this memorandum in support of their motion, made pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, for an order granting leave for them to file a second amended and supplemental complaint as to certain limited and sharply defined areas. By this motion, plaintiffs seek: (1) to add two restraints to the existing Counts in the complaint based on newly uncovered facts learned in

624(c)

discovery; the restraints relate to the NBA's reserve compensation plan and the NBA defendants' practice of disseminating and exchanging among all its clubs information concerning players' salaries; (2) to conform the class definition contained in the complaint to this Court's prior rulings and the already mailed class notice; (3) to add two new NBA member entities as defendants; and (4) to make a variety of minor housekeeping changes which carry out this Court's previous rulings and orders and which reflect discovery of new facts.

The indisputable facts relevant to this motion are set forth in detail in the affidavit of Peter Gruenberger and the exhibits annexed thereto which are being submitted herewith, and those facts will not be repeated here except for explanation or clarification.

ARGUMENT

Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, courts have liberally granted leave for pleadings to be amended. Foman v. Davis, 371 U.S. 178, 182 (1962); Middle Atlantic Utilities Co. v. S.M.W. Development Corp., 392 F.2d 380, 384 (2d Cir. 1968). This is especially true with regard to the assertion of new antitrust claims. See Glazer Steel Corp. v. Yawata Iron & Steel Co., 56 F.R.D. 75, 80 (S.D.N.Y. 1972).

Plaintiffs seek to amend and supplement the existing complaint primarily on the basis of factual information which only recently became available to them through document discovery and depositions. Where new factual information is discovered by a party during discovery proceedings, justice requires

that he be allowed to amend his pleading. Glazer Steel Corp. v. Yawata Iron & Steel Co., supra, 56 F.R.D. at 78; Fischer & Porter Co v. Haskett, 287 F. Supp. 831, 834 (E.D. Pa. 1968); Reines Distributors, Inc. v. Admiral Corp., 39 F.R.D. 39, 40 (S.D.N.Y. 1963). See also Key Pharmaceuticals, Inc. v. Hans Lowey, 54 F.R.D. 447 (S.D.N.Y. 1972), granting plaintiff leave to file a first amended complaint and the same case at 373 F. Supp. 1190 (S.D.N.Y. 1974) granting the plaintiff leave to file a second amended complaint after all of plaintiff's discovery had been completed.

The proofs will show that the NBA defendants have in fact engaged in the dual practices of (1) reserve compensation and (2) disseminating player salary information among all teams (See Gruenberger Aff. ¶¶7-16, and Exhibits G through K). The first practice has been condemned, or at least questioned by every court which has ruled as to such restraints. See Robertson v. National Basketball Association, et al., 389 F. Supp. at 891, 896 in this action; Kapp v. National Football League, 390 F. Supp. 73, 82 (N.D. Cal. 1974); Bryant v. National Football League, 75 Civ. 2543 (C.D. Cal. 1975). The second practice of exchanging price information among competitors, as here, has been condemned by the United States Supreme Court as a per se price fixing mechanism. United States v. Container Corp. of America, 393 U.S. 333, 337 (1969).

Moreover, since there is no dispute that the NBA does engage in these practices according to their own documents and deposition testimony, the proofs with respect thereto will come in at trial and the pleadings would have to be amended to conform to the evidence at that time. No reason exists to wait until then, particularly since no prejudice results to the NBA defendants by granting plaintiffs' amendment.

For all the foregoing reasons, particularly since there can be no showing of prejudice by the NBA defendants, leave for plaintiffs to amend their complaint should be granted. See e.g., Glazer Steel Corp. v. Yawata Iron & Steel Co., supra, 56 F.R.D. at 79; Green v. Wolf Corp., 50 F.R.D. 220, 223 (S.D.N.Y. 1970).

Dated: October 17, 1975

Respectfully submitted,

WEIL, GOTSHAL & MANGES

By _____
(A Member of the Firm)
Attorneys for Plaintiffs
767 Fifth Avenue
New York, New York 10022
(212) 758-7800

Of Counsel:
Peter Gruenberger
James W. Quinn
Irwin H. Warren

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al.,

Plaintiffs,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants.

70 Civ. 1526 (RLC)

REPLY AFFIDAVIT

AMERICAN BASKETBALL ASSOCIATION, et al.,

Cross-claimants,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Cross-defendants.

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

PETER GRUENBERGER, being duly sworn, deposes and says:

1. I am a member of the firm of Weil, Gotshal & Manges, attorneys for plaintiffs. I make this affidavit in further support of plaintiffs' motion to amend and supplement their complaint and in reply to the NBA defendants' opposition to the proposed amendment set forth in Mr. Stern's affidavit served on October 28, 1975.

2. Mr. Stern's answering affidavit concedes every fact set forth in my moving affidavit of October 17, 1975. Thus it is acknowledged that the matters as to which amendment is sought were

learned in recent discovery, that plaintiffs have not sought to delay and that plaintiffs were led to believe a motion would be unnecessary (see e.g., Moving Affidavit ¶¶2, 4-6, 9, 12 and 13).

3. Nor is it rebutted that the subject matters of the proposed amendment are highly relevant and indeed integral parts of the existing complaint. Hence, the reserve compensation plan is part and parcel of the entire reserve system and has already been ruled upon by this Court and included in the class notice; the exchange of salary information is central to the conspiracy to eliminate competition and fix prices in the players' market; the amended definition of the class represents the true state of affairs according to this Court's rulings and the parties' agreements; and the two new defendants have adopted all of the restraints imposed by the rest of the defendants (Moving Aff. ¶¶8, 10, 11, 17 and 18).

4. It is also acknowledged that the plaintiffs have not invented the new restraints since their existence and operations have been discerned in discovery from the documents and testimony of the NBA defendants themselves.

5. Of equal importance, the NBA defendants have not rebutted a single fact that shows that no extra work will be required as to any part of the amendment -- particularly since all the work in regard to the new restraints and new defendants has already been done by both sides (Moving Affidavit ¶¶14, 17 and 18).

6. Instead of showing prejudice flowing from the amendment, the NBA defendants' position is devoted almost exclusively to a recitation of the workload of attorneys on

aspects of this case that have nothing to do with the amendment. No one has ever disputed that Mr. Stern's firm and mine have made herculean efforts to prepare this case for trial. But the NBA defendants miss the mark in unresponsively citing that workload as the basis of their claim of prejudice.

7. Plaintiffs' accompanying reply memorandum discusses the lack of merit as a matter of law in the claim of prejudice advanced by the NBA defendants since that claim is based not upon prejudice flowing from the amendment but from the existing discovery and trial schedule. In stating that his clients may well seek relief from that schedule without regard to the amendment (Stern Aff. ¶11), Mr. Stern admits that his clients are simply using the amendment as an excuse to change the existing schedule and have no valid grounds upon which to challenge the amendment.

8. The inconsistency inherent in the NBA defendants' argument is made apparent by Mr. Stern's explanation concerning his firm's workload as to matters collateral to the amendment. On the one hand, he complains that under the existing schedule he cannot complete discovery and prepare for trial. On the other hand, his clients, not the plaintiffs, are the ones who are responsible for that very workload. The NBA defendants have noticed the great preponderance of the depositions which require multiple depositions every day; they are taking the depositions of 75 class members; they are seeking to take the depositions of leaders of players associations in the other sports; and they seek to subpoena documents relating to all of the collective bargaining throughout the history of football, baseball and hockey.

9. Plaintiffs have eliminated many of the depositions originally scheduled by them. When asked in August to reduce their deposition schedule, the NBA defendants to the contrary not only refused, but increased their list of deponents by the score. While they had a right not to agree to eliminate some of the workload, they cannot now be permitted to complain about the very workload they created and use it as the excuse for objecting to this wholly proper amendment. Nor can they use that self-created work to justify changing their minds in September after telling me in August there would be no problem with the amendment.

10. Mr. Stern says he must represent his clients' interests and cannot willingly agree to the amendment. I must represent the 14 plaintiffs who are my clients as well as a class of approximately 500 other people. I cannot be asked in my role as counsel to the individual plaintiffs and class members simply to ignore facts learned in discovery, or to try this case with respect to only some of the restraints imposed on the class by the NBA defendants, or to mislead the class by sending them one notice which discusses restraints already ruled on by the Court but then not pursue those restraints in an amended complaint. Perhaps Mr. Stern has justified to himself why he changed his mind about agreeing to the amendment, but certainly he has not offered any justification for the Court to deny this motion. No one is seeking to prevent Mr. Stern from defending against the amendments on the merits, but it would be unjust to my clients were they barred from presenting the merits. The interests of his clients, my clients' and the Court would best be served by permitting the amendment and resolving the issues on the merits

11. The NBA defendants have made additional unresponsive and irrelevant contentions (Stern Aff. ¶7) concerning the collateral issues listed below, which have no relation whatever to the amendment. These matters are discussed below only to set the record straight, lest the Court believe the NBA innuendos that plaintiffs have not cooperated in this case or that such charges, even if true, could ever form the basis of a valid objection to the amendment. It is strange that on September 9, 1975 Mr. Cardozo stated in open Court that in no other case has he seen the cooperation which in this case plaintiffs have exhibited towards the NBA defendants, but one month later Mr. Stern would unjustly accuse plaintiffs of being uncooperative:

(a) The res judicata issue between the NBA and ABA. This has nothing to do with plaintiffs or the amendment.

(b) The alleged "continued refusal" by plaintiffs to turnover their tax returns and the Players' Association to provide its financial data. These matters were the subjects of a discovery motion made by the NBA defendants, which has not been granted by the Court. Unlike the NBA defendants' attempt to hide the facts concerning the real dollars earned by the owners of NBA teams, NBA defendants already know precisely what each plaintiff and class member earns from basketball, so they do not need any income tax returns. And, the NBA defendants' desire to see the Players' Association finances represents an endeavor for illicit purposes to inquire about facts not involved in this case concerning an entity which is not a party hereto.

(c) Inadequate document production from the ABA does not involve plaintiffs and the alleged inadequacy of the document production of Oscar Robertson is both misleading and irrelevant to this motion. It is true that Oscar Robertson produced only three documents from his files. He testified that those were the only documents he had in his files. The NBA defendants already have from many other sources his player contracts and all documents concerning his involvement in the collective bargaining process and his participation in anything else relevant to this case. There may be relevant documents located in Mr. Robertson's attorneys' office in Ohio, and if so, they will be produced for the continuation of Mr. Robertson's deposition, only one day of which has been completed. It is difficult to comprehend Mr. Stern's excoriation of Mr. Robertson and plaintiffs over the explicable lack of quantity of his files, given the facts that the NBA already probably has everything relevant anyway and that neither Mr. Robertson nor the overwhelming majority of other players ever kept regular files. It would be amusing, under other circumstances, were one to note that Mr. Stern ignores the fact that some of his corporate clients, like the Detroit club who are expected to keep files in the regular course of their business, turned over to plaintiffs just 20 documents, although that team was in the league for more than 20 years.

(d) The issue of attorney-client privilege among the parties is hardly relevant to this motion; what blame can be laid on plaintiffs' doorstep for properly asserting the privilege when the NBA defendants admittedly have asserted it thousands of times.

(e) The NBA defendants' complaints about discovery as to damages is impossible to understand. This Court ruled in its July 8, 1975 opinion (p. 23) that a bifurcated trial will be held as to damages and that discovery as to damages is now premature. In any event, plaintiffs did at the outset of discovery answer interrogatories concerning the theory of damages, which will be supplemented as to the details of damages at the appropriate time.

(f) The refusal of third-parties to comply with subpoenas cannot possibly be directed at plaintiffs.

12. If Mr. Stern were serious about avoiding work, where work can be avoided, he would not have allowed the following to happen: Earlier this week my associate Mr. Warren travelled all the way out to California for five days to continue the depositions of three NBA defendant representatives (Messrs. Cooke, Rothenberg and Schulman) to be taken by the ABA. I am informed that Mr. Warren asked a few questions of Messrs. Cooke and Rothenberg concerning a change in events relating to former player Wilt Chamberlain from the time they last testified in July. Mr. Stern refused to allow the witnesses to answer these questions not because of relevance or any ground other than that discovery must be cut off as to recent events despite plaintiffs clear right to discover into such matters. The invalidity of that argument is self-apparent and when the transcripts have been completed, plaintiffs intend to take appropriate measures.

Peter Gruenberger

Sworn to before me this
29th day of October, 1975

Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al.,

Plaintiffs,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants.

70 Civ. 1926 (RLC)

AMERICAN BASKETBALL ASSOCIATION, et al.,

Cross-claimants,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Cross-defendants.

PLAINTIFFS' REPLY MEMORANDUM IN SUPPORT OF MOTION TO AMEND COMPLAINT

WEIL, GOTSHAL & MANGES
767 FIFTH AVENUE
NEW YORK, N. Y. 10022

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al.,

Plaintiffs,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants.

70 Civ. 1526 (RLC)

AMERICAN BASKETBALL ASSOCIATION, et al.,

Cross-claimants,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Cross-defendants.

PLAINTIFFS' REPLY MEMORANDUM IN SUPPORT OF MOTION TO AMEND COMPLAINT

Plaintiffs submit this reply memorandum and the accompanying reply affidavit of Peter Gruenberger in further support of plaintiffs' motion to amend and supplement the complaint and in reply to the NBA defendants' opposition to such amendment as set forth in Mr. Stern's affidavit of October 28, 1975.

The NBA defendants have conceded all the facts set forth in plaintiffs' moving papers, which justify this amendment. Their opposition to the proposed amendment rests solely on the contention that even without an amendment the workload for counsel is too great under the existing discovery and trial schedule set by the Court (e.g., Stern Aff. ¶¶6, 11).

It is not surprising that the NBA defendants have been unable to cite a single authority in support of that contention -- no such authority exists. The law is clear that in order to justify opposition to the proposed amendment, the NBA defendants must establish that prejudice to them would result from the grant of the motion to amend. Middle Atlantic Utilities Co. v. S.M.W. Development Corp., 392 F.2d 380, 384 (2d Cir. 1968) (the focus is "on the resultant prejudice" to defendants).

Rather than having established any prejudice that would result from a grant of this motion, the NBA defendants have largely ignored the substance of the proposed amendment and unresponsively seek to change the Court's discovery and trial schedule. Such a deflection of the issues is an unwarranted and insufficient basis for opposition to the amendment.

As shown by plaintiffs' moving papers and admitted by Mr. Stern's affidavit (e.g., ¶3), plaintiffs have not delayed in seeking this amendment; the amendment is not an after-thought and plaintiffs have acted in good faith. According to the Second Circuit, the absence of delay or bad faith is critical to the determination of whether an amendment ought to be permitted. Middle Atlantic Utilities Co., supra, 392 F.2d at 384-85.

The Second Circuit specifically rejected as a ground for denial of a motion to amend the argument that "expensive and time-consuming" further "discovery and motions" would be required, and held that

> "The purpose of the federal rules is to provide for full and fair hearings on the merits. The burden of further discovery and motions is not a satisfactory basis to deny the motion to amend."

Middle Atlantic Utilities Co., supra, 392 F.2d at 386.

A fortiori this Court should reject the NBA defendants' arguments since here there has not even been a showing that the amendment would lead to a single extra bit of discovery or motion practice or work of any kind.

The NBA defendants make only two references to the substance of the proposed amendments. First, they claim without explanation that additional preparation would be

required if the two teams which came into the NBA in the last year were permitted to be added as defendants (Stern Aff. ¶9). That contention is spurious, since (a) these proposed two new defendants have joined the very conspiracy, engaged in the very practices and have caused the same injuries which form the basis of the complaint against the existing defendants, so that no new facts need be prepared for to defend these parties; and (b) plaintiffs will not take a single deposition of any representative of these teams, will not address any interrogatories to them and will not ask them a single question at trial. Thus, no new work will be required.

In similar circumstances, amendments have been permitted so as to add new parties who have joined a conspiracy during the course of a case. Contentions of prejudice have been rejected because it would be a waste of judicial effort to require the proposed amendment to be the subject of a separate lawsuit involving the same facts as exist in the pending action. E.g., Reines Distributors, Inc. v. Admiral Corp., 39 F.R.D. 39, 40-41 (S.D.N.Y. 1965).

The second reference (Stern Aff. ¶10) to the substance of the proposed amendment relates to the newly discovered restraint of exchange of salary information among the NBA defendants for the documented and undenied purpose of stabilizing players' salaries in the NBA. The NBA defendants

seek to justify that practice on the ground that members of a joint venture* multi-bargaining unit can exchange pricing information.

The Supreme Court in United States v. Container Corp. of America, 393 U.S. 333, 336 (1969), expressly found illegal reciprocal exchange of pricing information since the result was "to stabilize prices though at a downward level". This was the announced purpose of the reciprocal exchange of similar information in this case (See Exhibits I and J annexed to plaintiffs' moving papers.)** Accordingly, the amendment to incorporate this per se illegal practice is hardly "frivolous". Glazer Steel Corp. v. Yamata Iron & Steel Co., 56 F.R.D. 75, 77 (S.D.N.Y. 1972).

In addition, the NBA defendants are not permitted to turn plaintiffs' motion to amend into defendants' motion for a dismissal of the amendment. Absent a frivolous claim, which this is not, the Supreme Court has held that

* This Court has already ruled in its opinion of July 8, 1975 (p. 3, fn.) that it is not persuaded by the "joint venture" defense where, as here, restraints affecting players are concerned.

** That no extra work is required by the NBA defendants as to this new restraint is shown by the fact that they have conceded every statement of fact about this claim set forth in the Gruenberger Moving Affidavit (¶¶11-14).

> "If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claims on the merits."

Foman v. Davis, 371 U.S. 178, 182 (1962). The Second Circuit also has held that the motion to amend is not the time or place to test the sufficiency of an amendment. Middle Atlantic Utilities Co., supra, 392 F.2d at 386-87.

The NBA defendants make no reference whatever to three other facets of the proposed amendment: (1) the reserve compensation plan, (2) the class definition or (3) the miscellaneous changes required by the passage of time and the Court's prior orders. Their silence and failure to rebut the cogent reasons for permitting the amendment as to these matters.* demonstrates the paucity of merit inherent in their opposition.

In sum, the NBA defendants are asking the Court to let the case go to trial in a fragmented manner. They suggest we try only part of the reserve system (leaving out the reserve compensation plan by which the NBA has sought to replace the perpetual reserve clause and as to which the Court has already ruled); that we

* See the Gruenberger Moving Aff. (¶¶8-10, 16, 17 and 19) which is unrebutted by Mr. Stern's affidavit and which establishes that no extra work is involved in these proposed amendments.

make no reference to another restraint (the reciprocal exchange of salary information) which represents an integral part of the overall conspiracy to eliminate competition and fix prices in the players' market; that we use an unamended class definition that does not coincide with the Court's prior ruling or the class notice which has already been mailed; and that other changes that conform to the facts learned in discovery should be ignored. Furthermore, the NBA defendants are advocating that while plaintiffs may have discovery, they may not use any of the facts disclosed in discovery.

It is respectfully submitted that to uphold the NBA defendants' objections would severely prejudice the plaintiffs and result in judicial diseconomy by forcing plaintiffs to litigate part of the case now and another part later. Accordingly, plaintiffs' motion should be granted in all respects.

Dated: October 29, 1975

Respectfully submitted,

WEIL, GOTSHAL & MANGES

By _____
(A Member of the Firm)

Attorneys for Plaintiffs
767 Fifth Avenue
New York, New York 10022
(212) 758-7800

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al.,

Plaintiffs,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants.

70 Civ. 1526 (RLC)

AFFIDAVIT

AMERICAN BASKETBALL ASSOCIATION, et al.,

Cross-claimants,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Cross-defendants.

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

DAVID J. STERN, being duly sworn, deposes and says:

1. I am a member of the firm of Proskauer Rose Goetz & Mendelsohn, attorneys for all defendants except Madison Square Garden Center, Inc. and Madison Square Garden Corporation (hereinafter the "NBA defendants"). I make this affidavit in opposition to the motion by plaintiffs to further amend their complaint.

2. We agree with plaintiffs that in the absence of prejudice amendments to pleadings should be freely permitted. But the granting of plaintiffs' amendment motion at this time would work the very prejudice the rules caution against.

3. In March 1974, before the motions addressed to the pleadings had been made in accordance with the schedule

set by the Court, the NBA defendants agreed to a variety of amendments that plaintiffs wished to make to the complaint. Similarly, in August 1975, when Mr. Gruenberger proposed yet a second amendment, I indicated that our inclination would be to consent to it. In light of the fact that, as Mr. Gruenberger states (¶2, p.3), discovery had just begun in April 1975 (when the Court lifted its prior stay of all discovery), and three weeks earlier the Court's July 8, 1975 opinion had given "early resolution" to three of the "plethora of [pretrial] problems," I could not see any basis for arguing that an amendment at the beginning of discovery could possibly prejudice my clients. Indeed, by agreement among counsel, and under supervision of the Court, depositions of parties did not begin until June 1975, just two months before Mr. Gruenberger's request.

4. However, on September 9, 1975, three months after depositions of parties had begun, the Court set February 1 for the close of all discovery, and subsequently set March 15 as the date for a "full hearing" on the NBA's rule of reason defense, which may remove from the jury consideration of the substantive antitrust defenses, and ordered that the trial would begin on May 3, 1976. (While we are confident the Court does not intend to deprive the NBA defendants of their right to trial by jury of their essential antitrust defenses, we are unable to understand how that right can be preserved if there is to be a thus far undefined "full hearing" before trial.)

5. The workload created by the attempts of counsel for the parties to complete, within 10 months, the discovery in these consolidated, multi-party class action antitrust cases is a matter of record in this Court. I challenge

plaintiffs to cite a single nationwide multi-party antitrust action where defendants' document production, interrogatory answers and depositions have been conducted as expeditiously as in the case at bar.

6. I respectfully submit that even the work required to prepare for and conduct the remaining 150 deposition days that must be held in the 61 working days between today and February 1, 1976 (including days on which six depositions will be conducted) may pale by comparison to the demands that will be made upon my firm in connection with preparation of a pretrial order, the proposed "full hearing," and the trial itself. Added to this will be a number of matters which will ultimately require the involvement of the Court before the completion of discovery. The press of present discovery, motion practice with respect to both plaintiffs and the ABA, and an attempt to develop some comprehension of the more than 18,000 pages of testimony received to date and the data produced by our clients, the ABA cross-claimants, and the plaintiffs (including the National Basketball Players Association), have not permitted us the time to focus on the additional matters.

7. In the category of matters yet to be resolved, some of which have already been raised in motions presently sub judice, are the following:

(a) The effect of the prior dismissals by the ABA, which the NBA defendants contend should result in a ruling that pre-September 1972 allegations are precluded by res judicata.

(b) The several issues remaining with respect to plaintiffs' objections to discovery requests, including the

continued refusal of the Players Association to provide financial data about itself, and the plaintiffs' refusal to supply their income tax returns -- despite the production, at plaintiffs' demand, of like information by the NBA defendants. Needed also would be the refusal of plaintiffs to produce their agreements with persons who represented them in contract negotiations with the NBA defendants.

(c) Questions of inadequate document production by the plaintiffs and the ABA. For example, plaintiff Oscar Robertson, who was a player in the NBA for 14 years, and who was President of the Players Association for 10 of those years, produced only three documents in response to the Rule 34 document request by the NBA.

(d) Questions of attorney-client privilege asserted by each of the parties. We are in the process of indexing the several thousand documents with respect to which the NBA claims privilege, and have been advised that plaintiffs will be seeking a ruling on them, just as we will be seeking a ruling on such assertions by plaintiffs and the ABA.

(e) The continued failure of the ABA and the plaintiffs to provide, by answering interrogatories propounded at the beginning of discovery, their alleged theories of damage, and the refusal of the named plaintiffs to testify on their damages.

(f) Collateral issues, such as the refusal of third party witnesses to comply with subpoenae duces tecum.

8. The above listing is not meant to be exhaustive; nor are we requesting rulings by the Court on them at this time. They merely highlight the dilemma that my firm, as counsel, finds itself in. On the one side is the liberality of the Federal Rules -- and my clients' unquestioned

compliance therewith in discovery to date. This has included production in New York City of tens of thousands of documents from 18 different entities located from coast to coast, and the continued production, on virtually a daily basis, of present NBA documents. The extraordinarily expedited discovery schedule would not have been possible if my firm did not represent, with one exception, each of the 18 NBA defendants. The already enormous scheduling problems and substantial burdens on the time of the Court would have been multiplied many times over if some NBA teams had been separately represented. On the other side of the dilemma is the prejudice which would accrue to my clients were I voluntarily to agree to an amendment of the complaint that would require even a single additional day of work. Of course, the proposed amendment would necessarily require much more.

9. For example, could plaintiffs seriously contend that if my firm were to represent the two additional defendants they seek to add, that there would be no additional preparation required for trial? In light of the document production that has been required to date, the interrogatory answers, the deposition schedule, and the necessity to prepare for trial employees of entities against whom claims aggregating possibly hundreds of millions of dollars will be asserted, plaintiffs' attempts to minimize their proposed amendment are disingenuous.

10. Another example is plaintiffs' novel assertion, in the proposed amendment, that the exchange of salary information by members of a joint venture multi-employer bargaining unit violates the antitrust laws. Can it seriously be argued that preparation of a factual and legal defense to the charge will not require the expenditure of many days of work by defendants and their counsel?

11. I do not discuss here every proposed amendment that plaintiffs would make to the complaint at this time. Plaintiffs seem intent upon asserting against defendants the greatest number of claims that can be made with respect to the operation of the NBA, while clamoring for the earliest possible trial date and the most limited period of time in which defendants can prepare their defenses. Plaintiffs have already put the NBA defendants in a position that may well require relief from the present schedule even without a pleading amendment. (The present schedule leaves no time to digest and attempt to understand the immense amount of data now being collected.) My firm would fail in its obligations to our clients were we to become willing parties to plaintiffs' attempts further to increase the already staggering burdens of defense.

12. Accordingly, I respectfully request that plaintiffs' motion to amend the complaint, to the extent that it seeks to do anything more than renumber paragraphs and correct typographical errors, be denied.

David J. Stern

Sworn to before me this
day of , 1975.

Notary Public

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, WILLIAM BRADLEY, JOE CALDWELL, ARCHIE CLARK, MEL COUNTS, JOHN HAVLICEK, DONALD KOJIS, JON McGLOCKLIN, McCOY McLEMORE, THOMAS MESCHERY, JEFFREY MULLINS, WESTLEY UNSELD, RICHARD VAN ARSDALE, and CHESTER WALKER, individually and as representatives of all present and future active players in the National Basketball Association, Plaintiffs, -against- NATIONAL BASKETBALL ASSOCIATION, a joint venture, MADISON SQUARE GARDEN CENTER, INC., MADISON SQUARE GARDEN CORPORATION, MILWAUKEE PROFESSIONAL SPORTS & SERVICES, INC., THE CAPITAL BULLETS BASKETBALL CLUB, INC. (formerly THE BALTIMORE BULLETS BASKETBALL CLUB, INC.), RIKO ENTERPRISES, INC., KINGS PROFESSIONAL BASKETBALL CLUB INC. (formerly CINCINNATI BASKETBALL CLUB COMPANY), BOSTON CELTIC BASKETBALL CLUB, INC. (formerly TRANS NATIONAL CUMMUNICATIONS, INC.), DETROIT PISTONS BASKETBALL COMPANY (formerly ZOLLNER CORPORATION), ATLANTA HAWKS BASKETBALL, INC., CALIFORNIA SPORTS, INCORPORATED, THE CHICAGO PROFESSIONAL BASKETBALL CORPORATION, PHOENIX PROFESSIONAL BASKETBALL CLUB, GOLDEN STATE WARRIORS (formerly SAN FRANCISCO WARRIORS), SEATTLE SUPER-SONICS CORPORATION, TEXAS SPORTS INVESTMENTS, INC. (formerly SAN DIEGO BASKETBALL CLUB), BUFFALO BRAVES, INC., CLEVELAND PROFESSIONAL BASKETBALL COMPANY, PRO BASKETBALL, INC., NEW ORLEANS PROFESSIONAL BASKETBALL CLUB and AMERICAN BASKETBALL ASSOCIATION, Defendants.	:	70 Civ. 1526 (RLC) ANSWER TO SECOND AMENDED AND SUPPLEMENTAL COMPLAINT (Jury Trial is Demanded)

Defendants, NATIONAL BASKETBALL ASSOCIATION, MILWAUKEE PROFESSIONAL SPORTS & SERVICES, INC., CAPITAL BULLETS BASKETBALL CLUB, INC., RIKO ENTERPRISES, INC., KINGS PROFESSIONAL BASKETBALL CLUB, INC., BOSTON CELTICS BASKETBALL

CLUB, INC., DETROIT PISTONS BASKETBALL COMPANY, ATLANTA HAWKS BASKETBALL, INC., CALIFORNIA SPORTS INCORPORATED, THE CHICAGO PROFESSIONAL BASKETBALL CORPORATION, PHOENIX PROFESSIONAL BASKETBALL CLUB, GOLDEN STATE WARRIORS, SEATTLE SUPERSONICS CORPORATION, TEXAS SPORTS INVESTMENTS, INC., BUFFALO BRAVES, INC., CLEVELAND PROFESSIONAL BASKETBALL COMPANY, PRO BASKETBALL, INC., and NEW ORLEAN BASKETBALL CLUB (said entities being hereinafter collectively referred to as the "answering defendants") by their attorneys, PROSKAUER ROSE GOETZ & MENDELSOHN, for their answer to the second amended and supplemental complaint (hereinafter "complaint") herein, allege:

AS TO COUNT ONE

1. Admit that plaintiffs' claim purports to arise and to be brought under the Sherman and Clayton Acts as alleged in paragraph 1 of the complaint, but deny that such claim is well founded thereunder and deny that the answering defendants have violated those statutes.

2. Deny the allegations contained in paragraph 2 of the complaint.

3. Deny the allegations contained in paragraph 3 of the complaint, except admit that those of defendant clubs (as defined in paragraph 7 of the complaint) as are corporations transact business within this District within the meaning of 15 U.S.C. §22; and admit that defendants National Basketball Association (the "NBA"), Madison Square Garden Corporation and Madison Square Garden Center, Inc., transact business or are found or have an agent within this District.

4. Deny the allegations contained in paragraph 4

of the complaint, except admit plaintiffs purport to bring this action on behalf of the class of persons described in said paragraph.

5. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the complaint, except admit that plaintiffs were or presently are active players for one of the now 18 clubs in the NBA.

6. Deny the allegations contained in paragraph 6 of the complaint, except admit that defendant NBA is a joint venture which operates a professional basketball league in the United States consisting of 18 members which own and operate professional basketball clubs located in 18 different home cities in the United States under franchise from the NBA, and admit that the NBA is found within this District and maintains its principal office at 2 Pennsylvania Plaza, New York, New York.

7. Answering the allegations contained in paragraph 7 of the complaint, admit that the corporations and partnerships listed in that paragraph were organized or incorporated in the states set forth and own and operate or did own and operate the clubs indicated, except deny that Madison Square Garden Center, Inc. owns and operates the New York Knickerbockers and deny that Madison Square Garden, Inc. is incorporated under the laws of the State of Michigan; deny that Phoenix Professional Basketball Club is a corporation; deny that the Golden State Warriors is operated by Golden State Warriors (a partnership); deny that the New Orleans Jazz is owned or operated by the New Orleans Professional Basketball Club; admit that those of defendant clubs as are corporations transact business within this

District within the meaning of 15 U.S.C. §22; and deny that defendant clubs are found or are doing business within this District. Except as admitted herein, deny the allegations contained in paragraph 7 of the complaint.

8. Deny the allegations contained in paragraph 8 of the complaint, except admit that the individuals named in paragraph 8 are or were officers and/or directors of defendant clubs; admit that the individuals named in paragraph 8 are or were members or alternate members of the Board of Governors; and admit that the Board of Governors performs the functions set forth in the Constitution and By-Laws of the NBA, a copy of which will be made available to the Court at the trial of this action.

9. Deny the allegations contained in paragraph 9 of the complaint.

10. Deny that the group of persons described in paragraph 10 of the complaint is a proper class as defined by Rule 23 of the Federal Rules of Civil Procedure.

11. Deny the allegations contained in paragraph 11 of the complaint.

12. Deny the allegations contained in paragraph 12 of the complaint, except admit that players in the NBA execute contracts with the clubs for which they play; deny knowledge or information sufficient to form a belief as to the truth of the allegations made with respect to "future player[s]"; and admit that players for clubs in the NBA are subject to the terms and provisions set forth in the contracts they execute.

13. Deny the allegations contained in paragraph 13 of the complaint.

14. Deny the allegations contained in paragraph 14 of the complaint.

15. Deny the allegations contained in paragraph 15 of the complaint.

16. Deny the allegations contained in paragraph 16 of the complaint, except admit that defendant clubs stage basketball games between clubs in the NBA for which plaintiffs play; admit that plaintiffs played college basketball before entering into contracts with the defendant clubs by whom they are now employed; and refer to the NBA Uniform Player Contract for all its terms and provisions.

17. Deny the allegations contained in paragraph 17 of the complaint, except admit that the staging of basketball games between clubs owned and operated by defendant clubs involve interstate trade and commerce, and that, on occasion and to a degree, defendant clubs engage in the activities set forth in paragraph 17.

18. Admit that the interstate transactions of defendant clubs involve collective annual expenditures and receipts in excess of one million dollars.

19. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19 of the complaint, except admit that professional basketball differs in some respects from other sports and from college basketball, but nevertheless competes therewith.

20. Deny the allegations contained in paragraph 20 of the complaint.

21. Deny the allegations contained in paragraph 21 of the complaint, except admit that the vast majority of active NBA players played college basketball and that the NBA and defendant clubs annually conduct a so-called college

"player draft" that operates in the manner set forth in the Constitution and By-Laws of the NBA. The player draft is designed to strengthen the weakest teams in the NBA, thus insuring more effective competition between and among clubs in the NBA from year to year. Such competition enhances the interest of spectators and induces their attendance at basketball games, all to the collective benefit of plaintiff players and defendant clubs.

22. Deny the allegations contained in paragraph 22 of the complaint, except admit that NBA rules require the use of the Uniform Contract and that exceptions to these rules have been made.

23. Deny the allegations contained in paragraph 23 of the complaint, except admit the NBA rules require the filing with the Commissioner of contracts between active NBA players and defendant clubs, and that the Commissioner and the Board of Governors have the powers and duties as set forth in the Constitution and By-Laws of the NBA.

24. Deny the allegations contained in paragraph 24 of the complaint, and refer to the Uniform Contract for all its terms and provisions.

25. Deny the allegations contained in paragraph 25 of the complaint, and refer to the Uniform Contract for all its terms and provisions.

26. Deny the allegations contained in paragraph 26 of the complaint, and refer to the Uniform Contract for all its terms and provisions.

27. Deny the allegations contained in paragraph 27 of the complaint, except admit that when a player is under contract to play basketball for a club in the NBA no other

NBA club will attempt to induce him to breach his contract; admit that when a player's contract is assigned by one NBA club to another both the player and the assignee club are subject to the terms of the contract so assigned; and admit that teams in the NBA that violate the NBA By-Laws and Constitution, or interfere with the contractual rights to players playing for other NBA teams, may be subject to penalties, and have been penalized, pursuant to the NBA By-Laws and Constitution.

28. Deny the allegations contained in paragraph 28 of the complaint, except admit that certain information relating to player compensation has been distributed to and has been made available to NBA member teams from the NBA.

29. Deny the allegations contained in paragraph 29 of the complaint, and refer to the Uniform Contract and the Constitution and By-Laws of the NBA.

30. Deny the allegations contained in paragraph 30 of the complaint.

31. Deny the allegations contained in paragraph 31 of the complaint, except admit that the American Basketball Association (the "ABA") was organized in 1967 and that since then one or more clubs in the ABA and one or more of defendant clubs have competed for the services of particular basketball players.

32. Deny the allegations contained in paragraph 32 of the complaint.

33. Deny the allegations contained in paragraph 33 of the complaint.

34. Deny the allegations contained in paragraph 34 of the complaint.

35. Deny the allegations contained in paragraph 35 of the complaint.

36. Deny the allegations contained in paragraph 36 of the complaint.

37. Deny the allegations contained in paragraph 37 of the complaint.

38. Deny the allegations contained in paragraph 38 of the complaint.

39. Deny the allegations contained in paragraph 39 of the complaint.

40. Deny the allegations contained in paragraph 40 of the complaint.

AS TO COUNT TWO

41. With respect to the reallegation of paragraphs 1 through 25, 27 through 31, and 33 through 37 of the complaint as contained in paragraph 41 of the complaint, repeat and reallege the answers thereto as contained hereinabove.

42. Deny the allegations contained in paragraph 42 of the complaint, except admit that the NBA sent a letter to the National Basketball Players Association dated September 2, 1971, and refer to said letter and the Uniform Player Contract for their terms and provisions.

43. Deny the allegations contained in paragraph 43 of the complaint, except admit that it is the policy of the NBA that if a player who has played for the additional "option" year without signing a new contract signs a contract with another NBA team, it becomes the obligation of the player's new team to compensate his old team for loss of the player; and that if a dispute between the two NBA member teams over compensation cannot be resolved, the dispute

could be placed before the NBA Commissioner for final resolution pursuant to the NBA Constitution.

44. Deny the allegations contained in paragraph 44 of the complaint.

45. Deny the allegations contained in paragraph 45 of the complaint.

46. Deny the allegations contained in paragraph 46 of the complaint, except deny knowledge or information sufficient to form a belief as to the truth of the allegations regarding the possible effects which construction of the so-called "reserve" clause in the manner set forth in paragraph 46 would have.

47. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 47, except deny that the NBA has an anticompetitive structure and has or pursues policies of boycott, blacklist and concerted refusal to deal.

48. Deny the allegations contained in the first sentence of paragraph 48 of the complaint; deny the allegations contained in the second sentence of paragraph 48 of the complaint insofar as it is alleged that the NBA has attempted to foreclose competition from the ABA; and deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in the third sentence of paragraph 48 of the complaint.

49. Deny the allegations contained in paragraph 49 of the complaint, except admit that since 1967 some NBA players have entered into playing contracts with their clubs which increased the compensation they had received in prior years.

50. Deny the allegations contained in paragraph 50 of the complaint, except admit that representatives of defendants NBA and ABA have, from time to time, discussed a proposal of consolidation between the NBA and the ABA, and further admit that the NBA, certain of its teams, the ABA, and certain of its teams, entered into an agreement dated May 7, 1971, and refer to said agreement for its terms and provisions.

51. Deny the allegations contained in paragraph 51 of the complaint.

52. Deny the allegations contained in paragraph 52 of the complaint.

53. With respect to the reallegation of paragraphs 38 through 40 of the complaint as contained in paragraph 53 of the complaint, repeat and reallege the answers thereto as contained hereinabove.

AS TO COUNT THREE

54. With respect to the reallegation of paragraphs 3 through 37, 39, 40, and 42 through 52 of the complaint * in paragraph 54 of the complaint, repeat and reallege the answers thereto as contained hereinabove.

55. Admit on information and belief the allegations contained in paragraph 55 of the complaint.

56. Deny that the ABA is in competition with the NBA except with regard to procuring the services of some basketball players, deny knowledge or information sufficient to form a belief as to the number of members of the ABA and the number of cities ABA clubs operate in, and admit the

allegations contained in the balance of paragraph 56 of the complaint.

57. Deny the allegations contained in paragraph 57 of the complaint.

58. Deny the allegations contained in paragraph 58 of the complaint, and deny that there exists a non-competition agreement between the NBA and the ABA and their respective clubs.

59. Deny the allegations contained in paragraph 59 of the complaint.

60. Deny the allegations contained in paragraph 60 of the complaint.

FIRST AFFIRMATIVE DEFENSE TO ALL COUNTS ALLEGED IN THE COMPLAINT.

61. Plaintiffs are represented for the purposes of collective bargaining with defendant clubs by the NBA Players Association, an unincorporated association that plaintiffs and their representatives have claimed is a labor union.

62. Clubs in the NBA have been bargaining in good faith concerning the terms and conditions of plaintiffs' employment with the NBA Players Association since at least 1964. The agreements reached as a result of said bargaining have, with the full consent and approval of the NBA Players Association, applied uniformly to all basketball players for NBA clubs. Plaintiffs' representatives and representatives of defendant clubs have, for example, bargained about the terms and provisions of the Uniform Contract and have, since 1964, both agreed and failed to agree upon various amendments thereto proposed by defendant clubs or the NBA Players Association.

63. The agreements, rules, regulations and practices challenged in this action by plaintiffs all relate to

the terms and conditions of plaintiffs' employment, and thus have been, are, or should properly be subjects for collective bargaining between the NBA Players Association and defendant clubs. Defendant clubs have at no time refused to bargain in good faith with respect to any such subject.

64. Since the claims alleged in this action by plaintiffs are part of a labor dispute, the National Labor Relations Board has primary jurisdiction of the controversy.

SECOND AFFIRMATIVE DEFENSE TO ALL COUNTS ALLEGED IN THE COMPLAINT.

65. The answering defendants repeat and reallege the allegations contained in paragraphs 61 through 63 above.

66. Since the claims alleged in this action by plaintiffs are part of a labor dispute, this Court is precluded from granting injunctive relief by reason of the Norris-LaGuardia and Clayton Acts.

THIRD AFFIRMATIVE DEFENSE TO ALL COUNTS ALLEGED IN THE COMPLAINT.

67. The answering defendants repeat and reallege the allegations contained in paragraphs 61 through 63 above.

68. The agreements, rules, regulations and practices challenged by plaintiffs in this action under the Federal antitrust laws are exempt from those antitrust laws by reason of Sections 6 and 20 of the Clayton Act (15 U.S.C. §17, 29 U.S.C. §52).

FOURTH AFFIRMATIVE DEFENSE TO ALL COUNTS ALLEGED IN THE COMPLAINT.

69. Each such count fails to state a claim upon which relief may be granted.

FIFTH AFFIRMATIVE DEFENSE TO ALL COUNTS ALLEGED IN THE COMPLAINT.

70. Each such count is barred by the applicable statute of limitations and laches.

SIXTH AFFIRMATIVE DEFENSE TO ALL COUNTS ALLEGED IN THE COMPLAINT.

71. There is a defect of parties with regard to each such count by reason of plaintiffs' failure to join the NBA Players Association. In the absence of said party, complete relief cannot be accorded among those already parties, and/or said party has an interest relating to the subject of the action and is so situated that the disposition of the action in its absence may as a practical matter impair or impede its ability to protect that interest.

SEVENTH AFFIRMATIVE DEFENSE TO ALL COUNTS ALLEGED IN THE COMPLAINT.

72. Plaintiffs are barred from bringing this action and have waived their right to do so by reason of the terms and provisions of their respective contracts with the defendant clubs by whom they are employed, and in particular by reason of paragraph 21 thereof.

EIGHTH AFFIRMATIVE DEFENSE TO COUNTS ONE AND TWO IN THE COMPLAINT.

73. The clubs which comprise the NBA are engaged in a league joint venture pursuant to which league competition in professional basketball is presented to the American public. The rules, regulations and practices which the plaintiffs challenge are reasonably necessary to organize professional basketball as a league sport, to preserve the

competitive balance of the teams in the league and the integrity of the sport, all of which is for the benefit of the players as well as the clubs.

74. The draft of college basketball players in which the lowest ranking clubs have the first selections is reasonably necessary to maintain a balanced league within which the teams are as competitively equal as possible. The reserve system is likewise a reasonable and necessary mechanism in order to maintain the balanced blend of competition and cooperation which is the hallmark of a professional sports league and without which it cannot exist.

75. If competition between and among NBA clubs in the acquisition of the services of professional basketball players were unfettered and if such players could without any restriction sell their services annually to the highest bidding NBA club, the financially weaker clubs would be deprived of all opportunity to contract for or maintain the services of superior basketball players and a serious imbalance of competition among NBA teams would result. This would tend to cause the failure of the weaker teams and the ultimate destruction of the league.

NINTH AFFIRMATIVE DEFENSE TO ALL COUNTS ALLEGED IN THE COMPLAINT.

76. There is a defect of parties with regard to such count by reason of plaintiffs' failure to join the ABA Players Association, a party that has an interest relating to the subject of the action and is so situated that disposition of the action in its absence may as a

practical matter impair or impede its ability to protect that interest.

WHEREFORE, the answering defendants demand judgment dismissing the complaint herein together with the costs and disbursements of this action.

PROSKAUER ROSE GOETZ & MENDELSOHN

By Michael A. Cardozo

A Member of the Firm
300 Park Avenue
New York, New York
Attorneys for the
Answering Defendants

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - -

OSCAR ROBERTSON, et al.,

Plaintiffs,

- against -

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants.

70 Civ. 1526 (RLC)

- - - - - - - - - - - - - - - - - - - -

AMERICAN BASKETBALL ASSOCIATION, et al.,

Cross-claimants,

- against -

NATIONAL BASKETBALL ASSOCIATION, et al.,

Cross-defendants.

- - - - - - - - - - - - - - - - - - - -

ORDER TO SHOW CAUSE

Upon the annexed affidavits of Michael A. Cardozo, both sworn to the 8th day of January 1976, the Certificate dated January 8, 1976 of Michael A. Cardozo pursuant to Rule 65 of the Federal Rules of Civil Procedure, the complaint filed by class plaintiff Wilton N. Chamberlain in the United States District Court for the Central District of California in an action entitled Wilton N. Chamberlain v. National Basketball Association, et al. (75 Civ. 4258), and all the prior proceedings in this action, including the March 15, 1970 authorization of class plaintiff Wilton N. Chamberlain to commence this action on his behalf, the complaint and second amended and supplemental complaint filed herein, the order of this Court dated February 14,

1975 certifying this case as a class action under Rule 23(b)(1), F.R. Civ. P., and the notice to the class sent to class plaintiff Wilton N. Chamberlain pursuant to this Court's order of September 15, 1975, and after hearing Proskauer Rose Goetz & Mendelsohn, attorneys for the moving defendants, and Weil, Gotshal & Manges, attorneys for plaintiffs herein, and sufficient cause appearing therefor, it is hereby

ORDERED, that class plaintiff Wilton N. Chamberlain show cause before this Court, on January , 1976, at M., or as soon thereafter as counsel can be heard, in Room 1106, United States Courthouse, Foley Square, New York, New York, why this Court should not enter an order, pursuant to Rules 23(d) and 65 of the Federal Rules of Civil Procedure, and the inherent powers of the federal courts, granting defendant National Basketball Association and its member teams a preliminary injunction enjoining and restraining class plaintiff Wilton N. Chamberlain, his agents, attorneys and all persons acting in concert with them, from prosecuting in any manner the aforesaid action in the United States District Court for the Central District of California.

And it further appearing to this Court from the annexed affidavit of Michael A. Cardozo that immediate, substantial and irreparable injury to defendant National Basketball Association and its member teams may occur, and this Court's jurisdiction may be undermined, if class plaintiff Wilton N. Chamberlain, and his agents, attorneys and all persons acting in concert with them, are permitted to continue to prosecute the aforesaid California action

before a decision on this application for a preliminary injunction is made, and after hearing oral argument on the application for a temporary restraining order by the attorneys for the moving defendants, and the attorneys for the plaintiffs herein, and upon the moving defendants posting security as fixed by this Court in the sum of $, conditioned as required by law, it is further

ORDERED, that pending the hearing and determination of the moving defendants' motion for a preliminary injunction, class plaintiff Wilton N. Chamberlain, and his agents, attorneys and all persons acting in concert with them, are hereby temporarily restrained from taking any steps in connection with, or prosecuting, the action in the United States District Court for the Central Division of California, entitled Wilton N. Chamberlain v. National Basketball Association, et al. (75 Civ. 4258); and it is further

ORDERED, that service of this order to show cause, together with copies of the papers upon which it is made, shall be deemed good and sufficient service if made in the following manner on the following persons, on or before M. on January , 1976:

(a) On plaintiffs, by serving a copy of the same by hand on their attorneys, Weil, Gotshal & Manges, 767 Fifth Avenue, New York, New York;

(b) On class plaintiff Wilton N. Chamberlain, by serving him as follows: (i) on his attorneys in this action, by hand delivering a copy of the same on Weil, Gotshal & Manges, 767 Fifth Avenue, New York, New York; (ii) on his attorneys in the aforesaid California

action by mailing a copy of the same to John H. Boone, Esq., Suite 420, Russ Building, 235 Montgomery Street, San Francisco, California; and (iii) on class plaintiff Wilton N. Chamberlain personally, by mailing, by certified mail, return receipt requested, a copy of the same to him at 15216 Antelo Place, Los Angeles, California, said class plaintiff's last known address;

(c) On defendants Madison Square Garden Center, Inc. and Madison Square Garden Corporation, by serving a copy of the same by hand on their attorneys, Paul, Weiss, Rifkind, Wharton & Garrison, 345 Park Avenue, New York, New York;

(d) On cross-claimants American Basketball Association and its member teams, other than Long Island Sports Enterprises, Inc., by serving a copy of the same on their attorney, Michael H. Goldberg, Esq. of counsel to said cross-claimants, by hand-delivering a copy of the same to him at 1700 Broadway, New York, New York; and

(e) On cross-claimant Long Island Sports Enterprises, Inc., by serving a copy of the same by hand on its attorneys, Spengler, Carlson, Gubar & Churchill, 280 Park Avenue, New York, New York.

U.S.D.J.

Issued at M. on
January , 1976 at
New York, New York.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al.,

Plaintiffs,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants.

70 Civ. 1526 (RLC)

AFFIDAVIT

AMERICAN BASKETBALL ASSOCIATION, et al.,

Cross-claimants,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Cross-defendants.

STATE OF NEW YORK)
: ss.
COUNTY OF NEW YORK)

MICHAEL A. CARDOZO, being duly sworn, deposes and says:

1. I am a member of Proskauer Rose Goetz & Mendelsohn, attorneys in this action for the NBA defendants other than Madison Square Garden Corporation and Madison Square Garden Center, Inc. I make this affidavit in support of the NBA defendants' motion pursuant to Rules 23 and 65 of the Federal Rules of Civil Procedure, to temporarily restrain and preliminarily enjoin class plaintiff Wilton N. Chamberlain from prosecuting an action he filed on December 22, 1975 in the United States District Court for the Central District of California.

2. As more fully described below, the Chamberlain action seeks the identical relief from some of the identical practices challenged in this class action, in which Mr. Chamberlain is a class plaintiff. The Chamberlain action challenges as violations of the Sherman Act the NBA's option clause, the NBA's tampering rules, and the NBA's compensation policy, insofar as said practices have affected Chamberlain. Those same practices are challenged in this action. In fact, Mr. Chamberlain gave written authorization for the Robertson class action to be commenced on his behalf. The commencement of the Chamberlain action five and one-half years after Mr. Chamberlain authorized the commencement of the Robertson class action, is no more than a complete and utter assault on the jurisdiction of this Court and the Court's class action certification. Prosecution of the Chamberlain action should be enjoined, just as this Court, in February of 1974, enjoined the American Basketball Association ["ABA"] from prosecuting in California an action closely related to the instant one.

A COMPARISON OF THE CHAMBERLAIN AND ROBERTSON COMPLAINTS

3. Comparison of the Chamberlain complaint, a copy of which is annexed hereto as Exhibit A, with the second amended and supplemental complaint in this action (hereinafter "Robertson complaint"), a copy of which is annexed hereto as Exhibit B, reveals that every substantive allegation in the Chamberlain complaint finds its parallel in the Robertson complaint.

4. In its boiler-plate allegations relating to parties, relevant market and interstate commerce, the

Chamberlain complaint is virtually a word-for-word copy of the cross-claim filed herein by the ABA. Perhaps this is explainable by the fact that Mr. Chamberlain's attorney in his California action, John H. Boone, Esq., was listed, along with Mr. Furth, as one of the attorneys for the ABA when it commenced the 1974 California action, the prosecution of which this Court subsequently enjoined.

5. The language of the Chamberlain complaint is strikingly similar to the ABA cross-claim, and the substantive allegations are the same as those in the Robertson complaint. Thus:

(a) Like the instant case, the party defendants in the Chamberlain action are the NBA and the entities owning each of its teams. (Compare Chamberlain complaint ¶¶ 4, 5 with Robertson complaint ¶¶ 6, 7).

(b) In both complaints the relevant market is alleged to be professional basketball, which is alleged to be a market separate and distinct from the presentation of other sporting events. (Compare Chamberlain complaint ¶¶ 9, 12 with Robertson complaint ¶¶ 19, 20, 33).

(c) Both complaints allege that the NBA is an unlawful monopoly and has been conspiring to restrain trade and commerce in major league professional basketball in violation of Sections 1 and 2 of the Sherman Act. (Compare Chamberlain complaint ¶ 12 with Robertson complaint ¶ 33).

(d) Both complaints allege that the NBA's practices have resulted in depriving players of the earnings they would have otherwise received. (Compare Chamberlain complaint ¶ 26 with Robertson complaint ¶ 38).

6. A study of the section of the Chamberlain complaint entitled "Acts of Defendants and Co-Conspirators" (Ex. A, p. 9), makes clear that the NBA practices complained of in Chamberlain are also complained of in Robertson. The Chamberlain complaint alleges (¶¶ 15 - 16) that Chamberlain was drafted by the Philadelphia team of the NBA, signed NBA contracts and played with Philadelphia and then San Francisco, and in 1965 was traded to Philadelphia. The complaint alleges (¶ 16), that after playing with Philadelphia for three seasons, Chamberlain was traded in 1968 to the Los Angeles team of the NBA.

7. In paragraphs 19-22, the two specific acts about which Chamberlain complains emerge. First, he alleges that as a result of Los Angeles' 1973 exercise of the option clause in his contract -- an option that an arbitrator subsequently found to have been properly exercised -- he was enjoined by a California state court from playing for the San Diego team of the ABA for the 1973-74 season. Then he complains that in 1975 the Los Angeles team of the NBA and the Commissioner of the NBA prevented other member teams, particularly the New York Knickerbockers, from negotiating with Chamberlain until and unless the negotiating rights to him were obtained from Los Angeles by another NBA team.

8. The one and one-half page long paragraph 23 must be read in its entirety to realize the full extent of the overlap between the Chamberlain complaint and the Robertson complaint. The Chamberlain complaint alleges that "[p]ursuant to the conspiracy and in furtherance of it, once a player has signed a Standard Player Contract with a member team to whom he is assigned and then has fully performed

his contract for the term of his employment, he is not free to negotiate with any other defendant member team . . . ." The paragraph goes on to allege:

(a) "In the first place, the Standard Player Contract gives the defendant owner a unilateral option to renew the contract for a further term of one year . . . . The purpose and effect of the option is to coerce the player to sign a new contract with the owner of his team on the owner's terms." A similar complaint about the option clause is found in the Robertson complaint at ¶ 25.

(b) "In the second place, during the time a player is under contract with one defendant member team, he is prohibited from negotiating with any other defendant member team for future employment, and all other defendant member teams are prohibited from negotiating with him or making offers to him." This same complaint about the tampering rules found in the NBA's by-laws and constitution is found in ¶ 27 of the Robertson complaint.

(c) "In the third place, even if and after a player's contract expires . . . and [he] becomes what defendants euphemistically call 'a free agent', he cannot become employed by any defendant member team except within the terms of the rules set forth by the Commissioner of defendant NBA to negotiate with and pay compensation to the defendant member team with the so-called'rights'." These allegations over the NBA's compensation policy are found in ¶ 43 of the Robertson complaint.

9. In short, every paragraph of the Chamberlain complaint finds its parallel in the Robertson complaint.

10. I have been advised that as of today at least five of the named defendants in the Chamberlain action have been served with a summons and complaint. On information and belief, other NBA member teams have been, or will soon be served and, unless the relief requested herein is granted, it will be incumbent upon all the NBA defendants to engage counsel in the Chamberlain action to defend them.

THE ROBERTSON ACTION

The Complaint

11. This class action was commenced on April 15, 1970. Exactly one month before its filing, on March 15, 1970, class plaintiff Chamberlain signed a document in which he authorized the National Basketball Players Association "to initiate one or more class actions on my behalf against the National Basketball Association . . . in order to bring about an end to any agreement among the clubs or other entities to eliminate competition among them in the acquisition of talent . . . . In addition, you are hereby authorized . . . to assert a claim for damages on my behalf." A copy of the authorization Mr. Chamberlain signed is annexed hereto as Exhibit C.

12. Despite this authorization, and the subsequent commencement of this class action, class plaintiff Chamberlain has seen fit to attempt to undermine the jurisdiction of this Court and to commence a separate and duplicative action.

13. As noted above, the second amended and supplemental complaint in this action contains specific reference to the three practices of the NBA challenged in the

Chamberlain complaint -- the option clause in the NBA Uniform Player Contract, the NBA tampering rules, by which an NBA player is prohibited from negotiating with another NBA team during the term of his contract, and the NBA compensation policy, whereby an NBA team is obligated to compensate another NBA team in the event that a team signs a player of a former team whose option with the former team has expired.

The Class Action Ruling

14. On February 14, 1975, this Court, over the vigorous opposition of the NBA defendants, granted plaintiffs' class action motion (389 F. Supp. 867 (S.D.N.Y. 1975)). It concluded:

> "It appears that the NBA conspiracy to monopolize professional basketball through intra- and inter-league restraints . . . has affected, affects, or will affect each member of the class in a similar way, and it appears that every NBA player has the same interest in ending these restraints." (389 F. Supp. at 898).

15. In certifying the case as a class action under Rule 23(b)(1), the Court found that "separate actions could establish incompatible standards of conduct for the NBA." (389 F. Supp. at 901). Perhaps anticipating that an action such as Mr. Chamberlain's might otherwise be commenced, the Court wrote that "if this action were allowed to continue only for the benefit of the named plaintiffs, it is conceivable that other members of the proposed class would file similar complaints in other courts. The court might grant injunctive relief, another court might refuse, and a third may give relief which differs in material respects from the first." (389 F. Supp. at 901). (Footnote omitted).

16. Although the NBA defendants argued that if

the case was found to be a class action, it should be certified under Rule 23(b)(3), in part so that class plaintiffs would be given the opportunity to "opt-out" of the class, this Court instead determined that the action should proceed "under (b)(1) exclusively, so that the opt-out privilege is unavailable." (389 F. Supp. at 903).

17. The NBA defendants remain of the opinion that this case is not a proper class action because, inter alia, (i) the challenged practices affect each NBA player differently, (ii) differing proof will be required from each player on the fact of his damage, and (iii) conflicts exist among the players who comprise this class. However, given the Court's certification, the NBA defendants are entitled to the limited protection the certification offers them, including the prevention of multiple litigations over similar claims -- one of the very reasons this Court certified the Robertson action as a Rule 23(b)(1) class action.

The Class Action Notice

18. By order dated September 15, 1975, a copy of which is annexed hereto as Exhibit D, a "Notice of Pendency of Class Action" was to be mailed to all persons who appeared to be part of the class, which was defined as follows:

> "All persons who (1) were on the active list of or under contract to a team in the NBA as of or since April 16, 1970 and who played at least one regular season or play-off game in the NBA or since the basketball season which included April 16, 1970 and (2) in the future play at least one such game for a team in the NBA prior to the date of a final judgment in this action."

According to paragraph 18 of the Chamberlain complaint, Mr. Chamberlain was under contract with an NBA team after April 16, 1970 and played basketball for an NBA team after that date. Therefore, in addition to the fact that Chamberlain specifically authorized this class action to be initiated on his behalf, Chamberlain is unquestionably one of the Robertson class plaintiffs.

19. The class notice also provided that a class member, upon application to the Court, could be represented in this action by counsel of his own choice. No such application has been made by Mr. Chamberlain.

20. By affidavit sworn to September 22, 1975, a copy of which is annexed hereto as Exhibit E, counsel for plaintiffs stated that the class notice had been sent to all members of the class including, on information and belief, class plaintiff Chamberlain.

21. Indeed, it can hardly be disputed that Mr. Chamberlain has actual knowledge of the maintenance of this class action. Not only did he authorize its commencement, but in early December, 1975, before Mr. Chamberlain had commenced his California action, plaintiffs' counsel advised us that Mr. Chamberlain's deposition in this case had been scheduled for January 7, 1976. Plaintiffs' counsel has advised me that before scheduling Mr. Chamberlain's deposition for that date, he had discussed the deposition with Mr. Boone, Mr. Chamberlain's California attorney. On January 5, 1976, two weeks after the Chamberlain action had been commenced, and two days before Mr. Chamberlain's deposition was to be held in this action, we were advised by plaintiffs' counsel that he had been unable to reach

Mr. Boone in recent days, that Mr. Chamberlain had not yet produced any documents for his deposition, and accordingly Mr. Chamberlain's January 7 deposition would have to be adjourned.

THE RELIEF REQUESTED SHOULD BE GRANTED

22. This Court is intimately familiar with the mammoth pre-trial discovery proceedings that have been going on in this case, including the discovery of class plaintiffs such as Mr. Chamberlain. It is also aware that in February, 1974, on the application of the NBA defendants, it enjoined the ABA from prosecuting in California a lawsuit closely related to this case. One of the ABA attorneys in that California action was John Boone, Mr. Chamberlain's attorney in his recently commenced action. The Court is also aware that it has directed the Robertson case to go to trial on or about June 1, 1976.

23. Under the circumstances, and as long as the class action certification remains in effect, Mr. Chamberlain's California action is absolutely inconsistent with the simultaneous maintenance of this action as a class action, particularly one that was instituted with Mr. Chamberlain's specific authorization.

24. For the NBA defendants to have to defend against Mr. Chamberlain's action, and subject themselves to extensive pre-trial discovery on the same issues, would undermine the sound administration of justice. In fact, discovery has been had in this action on Mr. Chamberlain's allegations with respect to the right of the New York team of the NBA to negotiate with him.

25. For the Chamberlain action to be allowed to proceed, when decisions or relief in that action might conflict with the decisions or relief this Court might render or grant on the same issues, would be ludicrous, particularly since the possibility of inconsistent relief and decisions was one of the factors on which this Court relied in certifying this case as a 23(b)(1) class action.

26. The assault on the jurisdiction of this Court is clear; the prejudice the NBA defendants would suffer if the Chamberlain action were permitted to go forward is equally clear. The NBA defendants unsuccessfully sought to persuade the Court that this action should not be prosecuted as a class action; alternatively, we suggested that it should be certified as a "(b)(3)" class action to permit parties to "opt-out". Those arguments were rejected. While we continue to believe, and state most respectfully, that the Court's class action rulings were in error, the class plaintiffs -- and particularly one who specifically authorized the class action to be initiated on his behalf -- are bound by the burdens, as well as the benefits, of the class action ruling. This Court has found this case to be a class action and no other action involving the same issues should be permitted to go forward.

CONCLUSION

27. The reason why this application is being brought on by an order to show cause, rather than by motion, is that time is of the essence because of the December 30, 1975 filing of the Chamberlain action, because of the fact that the NBA defendants must promptly defend themselves in

that action if the relief requested herein is not granted, and because the NBA is by this affidavit applying for a temporary restraining order.

28. No prior application for the relief sought herein has been made.

WHEREFORE, it is respectfully submitted that the order to show cause should be signed, a temporary restraining order should be issued, and, upon the return day of the motion, a preliminary injunction should be issued enjoining class plaintiff Wilton N. Chamberlain from prosecuting his California action.

Michael A. Cardozo

Sworn to before me, this 8th
day of January, 1976.

Notary Public

MICHAEL R. COGLIANO
NOTARY PUBLIC, State of New York
No. 41-5733645
Qualified in Queens County
Commission Expires March 30, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al., Plaintiffs, -against- NATIONAL BASKETBALL ASSOCIATION, et al., Defendants.	:	70 Civ. 1526 (RLC) AFFIDAVIT
AMERICAN BASKETBALL ASSOCIATION, et al., Cross-Claimants, -against- NATIONAL BASKETBALL ASSOCIATION, et al., Cross-Defendants.	:	

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

MICHAEL A. CARDOZO, being duly sworn, deposes and says:

1. I am a member of Proskauer Rose Goetz & Mendelsohn, attorneys for the NBA defendants other than Madison Square Garden Corporation and Madison Square Garden Center, Inc., and make this affidavit in further support of the NBA defendants' motion for a temporary restraining order enjoining class plaintiff Wilton N. Chamberlain from prosecuting the action he commenced on December 22, 1975, in the United States District Court for the Central District of California. Specifically, I make this affidavit to advise the Court that John Boone, Esq., Mr. Chamberlain's California attorney, has advised me that he has no objection to the entry of the temporary restraining order on the conditions outlined

below.

2. On January 6, 1976, I telephoned Mr. Boone and advised him that the NBA defendants would be seeking a temporary restraining order in this action against Mr. Chamberlain's prosecution of his California action. I told Mr. Boone that I would be prepared to make such an application on Friday, January 9, 1976, when the Court had scheduled a lengthy pretrial conference. In accordance with the instructions I received from Mr. Tom Klein, law clerk to Judge Carter, with whom I had discussed the matter, I told Mr. Boone that if it would suit his convenience, the Court would hear the temporary restraining order application early the following week, rather than on January 9.

3. After considering the matter, Mr. Boone, on January 6, advised me that he would not object to the entry of a temporary restraining order on the condition that the unsigned order to show cause and supporting affidavit was mailed to him on or before January 8, and the preliminary injunction hearing could be scheduled for January 23. Mr. Boone further advised me that his answering papers to the preliminary injunction motion would be mailed to me on or before January 16.

4. I told Mr. Boone that the conditions he proposed were satisfactory to me, but of course I could not speak for other counsel, particularly Weil, Gotshal & Manges, attorneys for the class plaintiffs. I also advised him that any such arrangement would have to be with the approval of the Court. Mr. Boone said he recognized that.

5. Mr. Boone stated that he would write a letter to the Court advising it of the foregoing. On January 7, 1976, I advised the Court and all counsel of the tentative arrangement Mr. Boone and I had reached.

6. On January 7, 1976, following further communication with Mr. Klein, I advised Mr. Boone that the Court would be available to hear oral argument on the preliminary injunction motion from 10:00 a.m. to noon on January 23, 1976, but would not be available in the afternoon of that day. Mr. Boone advised me that if he desired an evidentiary hearing on the preliminary injunction, he would so advise the Court and me, so that the evidentiary hearing could begin, if necessary, on January 22.

WHEREFORE, it is respectfully requested that the temporary restraining order sought herein be granted.

Michael A Cardozo
MICHAEL A. CARDOZO

Sworn to before me this
8th day of January, 1976.

Notary Public

MICHAEL R. COGLIANO
NOTARY PUBLIC, State of New York
No. 41-5733425
Qualified in Queens County
Commission Expires March 30, 197-

680

JOHN H. BOONE
LAW OFFICES OF JOHN H. BOONE
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SEYMOUR S. GOLDBERG
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Tel. 213-981-2020

Attorneys for Plaintiff

FILED
DEC 22 1975
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

WILTON N. CHAMBERLAIN,

Plaintiff,

vs.

NATIONAL BASKETBALL ASSOCIATION, a joint venture; CALIFORNIA SPORTS INCORPORATED, a California corporation; LEMAT CORPORATION, a Delaware corporation; the general partner of a limited partnership dba GOLDEN STATE WARRIORS; PRO-BASKETBALL, INC., an Oregon corporation; SEATTLE SUPERSONICS CORPORATION, a Washington corporation; THE PHOENIX PROFESSIONAL BASKETBALL CLUB, a limited partnership; MILWAUKEE PROFESSIONAL SPORTS AND SERVICES, INC., a Wisconsin corporation; CHICAGO PROFESSIONAL BASKETBALL CORPORATION, an Illinois corporation; KINGS PRO BASKETBALL, INC., a Missouri corporation; BOSTON CELTIC BASKETBALL, INC., a Massachusetts corporation; MADISON SQUARE GARDEN CORPORATION AND MADISON SQUARE CENTER, INC., a Michigan corporation; RIKO ENTERPRISES, INC., a Pennsylvania corporation; BUFFALO BRAVES, INC., a New York corporation; DETROIT PISTONS BASKETBALL COMPANY, a corporation; WASHINGTON BULLETS BASKETBALL CLUB, INC., a Maryland corporation; ATLANTA HAWKS BASKETBALL, INC., a Georgia corporation; TEXAS SPORTS INVESTMENT, INC., a Texas corporation; CLEVELAND PROFESSIONAL BASKETBALL COMPANY, INC., an Ohio corporation, and NEW ORLEANS PROFESSIONAL BASKETBALL CLUB, a Louisiana corporation,

Defendants.

CV 75 4258

CIVIL NO. _____

COMPLAINT

(Antitrust - Jury Trial Demanded)

JOHN H. BOONE
ATTORNEY AT LAW
420 RUSS BUILDING
SAN FRANCISCO 94104
(415) 788-0656

Plaintiff, by his attorneys, for his complaint against the defendants, demanding a trial by jury, respectfully allege:

I

NATURE OF CLAIM AND JURISDICTION OF COURT

1. This complaint is filed and this action instituted pursuant to 28 U.S.C. §1337 (1948) against defendants under Sections 4, 12 and 16 of the Clayton Act (15 U.S.C. §§ 15, 22 and 26 (1963)), in order to declare, to prevent and restrain, and to recover damages resulting from the violation by defendants, as hereinafter alleged of Section 1 of the Sherman Act (15 U.S.C. §1 (1963)), and of Section 2 of the Sherman Act (15 U.S.C. §2 (1963)).

2. Defendants transact business and are found within the Central District of California and are within the jurisdiction of this Court for the purpose of service. Some of the unlawful acts done in violation of the antitrust laws as herein after alleged have been performed within the Central District of California.

II

THE PARTIES

3. Plaintiff WILTON N. CHAMBERLAIN is a professional basketball player who played basketball exclusively for the Los Angeles Lakers, a professional basketball team owned and operated by defendant California Sports, Inc., for a period of five years pursuant to two separate contracts. The first of said contracts covered the 1968-69, 1969-70 and 1970-71 basketball playing seasons. The second of said contracts covered the 1971-72 and the 1972-73 basketball playing seasons. Plaintiff is a resident of the State of California.

4. Defendant National Basketball Association (herein "NBA") is a joint venture among professional basketball teams which was

JOHN H. BOONE
ATTORNEY AT LAW
[illegible]
SAN FRANCISCO 94104
(415) 7[illegible]

founded over twenty-five (25) years ago as the result of the "merger" or consolidation of teams in the Basketball Association of America and the National Basketball League. Since 1949, the NBA has had from 8 to 18 teams.

5. Also name as defendants in this action are the 18 current owners of NBA franchises (herein "Member Defendants"). Each of the Member Defendants currently holds a franchise issued by the NBA. The corporations and partnerships, the name of their teams and their principal places of business which comprise the Member Defendants are:

Member Defendants	Team Name	Principal Place of Business
California Sports Incorporated, a California corporation	Los Angeles Lakers	Los Angeles, Calif.
Lemat Corporation, a Delaware corporation, the general partner of a limited partnership, d/b/a Golden State Warriors	Golden State Warriors	San Francisco, Calif.
Pro Basketball, Inc., an Oregon corporation	Portland Trail Blazers	Portland, Oregon
Seattle Supersonics Corporation, a Washington corporation	Seattle Supersonics	Seattle, Washington
The Phoenix Professional Basketball Club, a limited partnership	Phoenix Suns	Phoenix, Arizona
Milwaukee Professional Sports and Services, Inc., a Wisconsin corporation	Milwaukee Bucks	Milwaukee, Wisconsin

JOHN H. BOONE
ATTORNEY AT LAW
[illegible]
SAN FRANCISCO 94104
(415) [illegible]

Chicago Professional Basketball Corporation, an Illinois corporation	Chicago Bulls	Chicago, Illinois
Kings Pro Basketball, Inc., a Missouri corporation	Kansas City-Omaha Kings	Kansas City Missouri
Boston Celtic Basketball Club, Inc. (formerly Trans National Communications, Inc., a Massachusetts corporation	Boston Celtics	Boston, Massachusetts
Masidon Square Garden Corp., and Madison Square Center, Inc., a Michigan corporation	New York Knickerbockers	New York, N.Y.
Riko Enterprises, Inc., a Pennsylvania corporation	Philadelphia 76ers	Philadelphia, Pennsylvania
Buffalo Braves, Inc., a New York corporation	Buffalo Braves	Buffalo, N.Y.
New Orleans Basketball Club, a Louisiana corporation	New Orleans Jazz	New Orleans, Louisiana
Detroit Pistons Basketball Company, a corporation	Detroit Pistons	Detroit, Michigan
Washington Bullets Basketball Club, Inc. a Maryland corporation	Washington Bullets	Landover, Maryland
Atlanta Hawks Basketball, Inc., a Geogria corporation	Atlanta Hawks	Atlanta, Georgia
Texas Sports Investments, Inc., a Texas corporation	Houston Rockets	Houston, Texas
Cleveland Professional basketball Company, Inc., an Ohio corporation	Cleveland Cavaliers	Cleveland, Ohio

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ATTORNEY AT LAW
[illegible] ANES BUILDING
SAN FRANCISCO 94104
(415) 7[illegible]

III

CO-CONSPIRATORS

6. Various other corporations, individuals and other entities not made defendants in this complaint participated as co-conspirators in the offenses charged herein and performed acts and made statements in furtherance thereof.

IV

NATURE OF TRADE AND COMMERCE

7. Major league professional basketball is conducted by and through teams operated throughout the United States to provide the general public with highly skilled exhibitions of the game of basketball. In general, to operate successfully each of such teams require, among other things:

a) Membership in a league in which the several member teams making up such league are reasonably well matched in playing strength;

b) The acquisition of a group of highly skilled and well-known players.

8. Major league professional basketball involves the organizing, promoting and holding of major league professional basketball games, including pre-season exhibition games, regularly scheduled season games, an "all-star game", and "play-off games" to determine the annual winner in conferences or divisions of a league and to determine the overall champion of the league; the staging of such games in suitable arenas or other places; the sale of tickets of admission; the negotiation and sale of rights to broadcast and re-broadcast such games over television and radio facilities; and the negotiation for, acquisition, and retention of highly skilled and well known players, coaches and other personnel.

9. Major league professional basketball constitutes a market separate and distinct from the exhibition of minor league or other

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other professional, collegiate, or high [illegible] basketball contests and other sporting bouts, forms of public shows, spectacles and entertainment. It is the only class of professional basketball which attracts widespread public interest, which is regularly publicized in the sporting pages of newspapers and magazines and which attracts network television and radio sponsorship. Major league professional basketball has a particular demand and peculiar qualities differing from college basketball. The college and professional rules of play differ in many respects, and entirely separate records and statistics are maintained for professional as opposed to college basketball. The caliber of both individual and team play of major league professional basketball generally is far superior to that of college basketball. Each year, only a relatively small number of the most outstanding college players are able to obtain positions on major league professional basketball teams. In addition, a very few players fall into a definable class known as "super stars". This designation is applicable to a player who is generally recognized as possessing skills far above average and who, by his fame, provides increased attendance and revenues for the team for which he plays. Generally, these players are established professional players but occasionally, because of outstanding success and fame during college, a player achieves this designation prior to becoming a major league professional basketball player.

10. The Defendant NBA schedules basketball games in various cities and, in order to perform such schedules, the Member Plaintiff and Member Defendants are regularly required to transport their players, coaches and other personnel across state lines and to make frequent use of the mails and other means of interstate communication. Admission tickets to Member Plaintiff' and Member Defendants' games are sold through the mails to customers located in states other than those states in which the

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games are played. A substantial number of people cross state lines to be present at such games. The major league professional basketball season begins in October and lasts continuously through April or May of each year. During the 1972-73 season, more than 700 games were placed in more than 25 cities by Member Defendants. Attendance at NBA Exhibition, regular season and play-off games for the 1972-1973 basketball season exceeded 2,600,000 persons.

11. Defendants have an agreement, the exact terms of which are unknown to plaintiff, with the Columbia Broadcasting System, which provides for national network television coverage of basketball games between Member Defendants. In addition, defendants have agreements with various television and radio stations which provide for the broadcasting of each of such teams' games on a local or regional basis. The broadcasts made pursuant to such agreements are often made by stations located in a state other than the one in which the game so transmitted is being played and, in many instances, the transmission is heard or seen by persons who are outside of the state in which the transmitting station is located.

V

OFFENSES CHARGED

12. Beginning in about the year 1973, the exact date being unknown to plaintiff, and continuing up to and including the date of the filing of this complaint, the defendants and other persons acting for each of them, have been and are now engaged in:

a) A continuing combination and conspiracy to restrain interstate and foreign commerce in the United States in

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major league professional basketball in violation of Section 1 of the Sherman Act;

b) A combination and conspiracy to monopolize and a combination and conspiracy to attempt to monopolize interstate and foreign commerce of the United States in major league professional basketball in violation of Section 2 of the Sherman Act.

13. Each act of defendants and co-conspirators herein alleged was done in furtherance of the offenses charged in the preceding paragraph and was a part thereof and was done with the primary purpose and intent of restraining, monopolizing, attempting to monopolize and substantially lessening competition in the trade and commerce described herein. It was the intent, jointly and severally, of defendants and co-conspirators, inter alia, to:

a) Eliminate competition in major league professional basketball;

b) Use their monopoly position in major league professional basketball to eliminate competition;

c) Combine their economic power to eliminate competition in major league professional basketball;

d) Eliminate competition in major league professional basketball by controlling, limiting, and restricting the acquition of major league professional basketball players, including plaintiff.

e) Eliminate plaintiff from the trade and commerce of major league professional basketball; and

f) Obtain substantial profits for themselves, at the expense of plaintiff, as a result of the restrictions upon competition in the trade and commerce herein alleged.

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VI

ACTS OF DEFENDANTS AND CO-CONSPIRATORS

14. Defendant NBA was organized in 1949, as the result of a "merger" or consolidation of the existing teams in the Basketball Association of America and the National Basketball League. Since that time the defendant NBA has dominated major league professional basketball.

15. Plaintiff, during the period 1955 to 1958, played basketball for the University of Kansas, at which time plaintiff gained national prominence as a basketball player. During the 1958-59 season plaintiff played professional basketball for the Harlem Globetrotters, and in 1959 was drafted by the Philadelphia team of the defendant NBA. At this time the defendant NBA and its member teams were the only entities engaged in the business of major league professional basketball.

16. In 1959 plaintiff signed a contract to play professional basketball for the Philadelphia team of the defendant NBA and played with this team during the 1959-60, 1960-61 and 1961-62 seasons. During the 1962-63, 1963-64 and part of the 1964-65 seasons, plaintiff played for the San Francisco team of the defendant NBA, and on January 15, 1965 was traded by San Francisco to Philadelphia. Thereafter plaintiff played for the Philadelphia team of defendant NBA for the balance of the 1964-65 season as well as for the 1965-66, 1966-67 and 1967-68 seasons. On July 8, 1968, plaintiff was trade by the Philadelphia team of the defendant NBA. The Los Angeles team was owned by defendant California Sports, Incorporated (herein referred to as "CSI").

17. On or about June 10, 1968, plaintiff and CSI entered into a letter agreement pursuant to which plaintiff agreed to sign a standard NBA player contract with CSI for the 1968-69, 1969-70 and 1970-71 basketball seasons. CSI agreed to pay

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plaintiff $200,000 per season, to select and assist plaintiff in entering certain business ventures, and to cause its sole shareholder, Jack Kent Cooke, to sell plaintiff $100,000 worth of stock in the Jack Kent Cooke, Inc. in return for a promissory note of plaintiff but with liabilities limited to the security of the stock.

18. On or about September 9, 1971, CSI and plaintiff executed another NBA Uniform Player Contract for the 1971-72 and 1972-73 basketball seasons for compensation of $200,000 per season plus "other considerations". A copy of this contract is attached hereto as Exhibit A. On or about November 7, 1971, plaintiff and CSI executed a collateral agreement which obligated CSI to continue to obtain business investments, extended the due date on the promissory note, and gave plaintiff an option to require Jack Kent Cooke to repurchase the stock which plaintiff had purchased from Jack Kent Cooke in 1968.

19. On or about July 31, 1973, the general manager of CSI attempted to renew and extend the contract of September 9, 1971, to cover the 1973-74 basketball season, pursuant to Section 22 of said contract.

20. On or about September 26, 1973, plaintiff announced that he had contracted with the San Diego Conquestadors of the American Basketball Association to play and/or coach beginning with the 1973-74 basketball season. CSI thereupon commenced an action in the Superior Court of the State of California for the County of Los Angeles. In this action CSI sought a preliminary and a permanent injunction restraining plaintiff from playing for the San Diego Conquestadors on the ground that under Section 22 of the NBA Uniform Player Contract the contract "shall be deemed renewed or extended for the period of one year," i.e., for the 1973-74 basketball playing season. Plaintiff resisted on the ground that CSI had not properly exercised its option to

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retain plaintiff's services as provided in Section 22 of the Uniform Player Contract. The Superior Court ordered this aspect of the dispute arbitrated, and on December 4, 1974, the arbitrator ruled for CSI.

21. As a result of the contract described hereinabove, plaintiff did not play basketball during the 1973-74 season nor the 1974-75 season, but devoted himself to other business interests

22. In the summer of 1975, the defendant Madison Square Garden Corporation, owner of the New York Knickerbockers, became interested in securing plaintiff's services. Defendant CSI asserted that plaintiff could not contract with any other member team of the defendant NBA unless and until CSI was paid a substantial sum of money for the "rights" of CSI to contract with plaintiff. This position was adopted by the Commissioner of defendant NBA who, on or about October 14, 1975, told the defendant member teams of the defendant NBA that any team signing a contract with plaintiff would have to negotiate with and compensate defendant CSI.

23. Defendant NBA and defendant member teams have at all times herein mentioned agreed, combined and conspired, and continue to agree, combine and conspire to restrain interstate trade and commerce in professional basketball in the United States unreasonably to monopolize professional basketball in the United States, and to that end to reduce player employees to a condition of servitude and subservience. Defendants have accomplished what they have agreed, conspired and combined to do. Defendant NBA and defendant member teams operate under a system of interacting Constitution and By-Laws, rules and regulations, and any gaps in the restraint of trade and monopolization accomplished thereby are filled by conferring on their so-called Commissioner dictatorial powers, which he exercises and which defendant owners obey,

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for their mutual profit. All defendant owners have agreed and bound themselves to abide by the Constitution, By-Laws, Rules and Regulations of the NBA and thereby bind themselves to observe decision of the NBA Commissioner, and to subject themselves to fines and penalties imposed by him. Pursuant to the conspiracy and in furtherance of it, once a player has signed a Standard Player Contract with a member team to whom he is assigned and then has fully performed his contract for the term of his employment, he is not free to negotiate with any other defendant member team, and no other defendant member team is free to negotiate with him, on freely and competitively negotiated terms. In the first place, the Standard Player Contract gives the defendant owner a unilateral option to renew the contract for a further term of one year. Thus, no matter how outstanding the services of the player may have been during the term of his contract so as to enable him to receive greater compensation in a free market commensurate with his abilities, he can be compelled to serve another year at reduced compensation. The purpose and effect of the option is to coerce the player to sign a new contract with the owner of his team on the owner's terms. In the second place, during the time a player is under contract with one defendant member team, he is prohibited from negotiating with any other defendant member team for future employment, and all other defendant member teams are prohibited from negotiating with him or making offers to him. In the third place, even if and after a player's contract expires, including the option period, and becomes what defendants euphemistically call a "free agent", he cannot become employed by any defendant member team except within the terms of the rules set forth by the Commissioner of defendant NBA to negotiate with and pay compensation to the defendant member team with the so-called "rights".

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24. Plaintiff is 39 years old. With his ability, health, age and experience plaintiff had a reasonable expectancy of at least five more years in which to play professional basketball and to receive fair compensation for his services.

25. Successful professional basketball players, such as plaintiff, can expect to and do become objects of great public interest. Accordingly, throughout the United States and elsewhere producers and distributors of products and services pay to successful players large sums of money for endorsements, appearances and the like.

26. By their unlawful acts defendants have damaged plaintiff by depriving him of the salaries and earnings he could reasonably expect to receive as a professional basketball player during his expectancy as a basketball player in a freely competitive market, and of income from reasonably expected endorsements, appearances and the like, all in an amount of multi-millions of dollars, the actual amount being not yet determined. When said amounts have been determined, plaintiff will ask leave of the Court to amend this complaint to insert the amounts herein.

WHEREFORE, plaintiff prays for judgment as follows:

(a) That the Court adjudge that defendants, and each of them, have violated §§ 1 and 2 of the Sherman Act, and award judgment to plaintiff and against each and every defendant in treble the amount of plaintiff's damages, the amounts of which are not yet determined, but which upon leave of the Court will be added when they have been determined, plus reasonable attorneys' fees to be determined by the Court;

(a) That defendants be enjoined and restrained from boycotting the plaintiff and from requiring any prospective employer to pay CSI "compensation";

(c) For plaintiff's costs in this action; and

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(d) For such other relief as is proper.

Dated: December 22, 1975.

Respectfully submitted,

JOHN H. BOONE
LAW OFFICES OF JOHN H. BOONE

SEYMOUR S. GOLDBERG
SEYMOUR S. GOLDBERG LAW CORPORATION

By John H Boone
John H. Boone
Attorneys for Plaintiff

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JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury of the foregoing action.

Dated: December 22, 1975.

JOHN H. BOONE
LAW OFFICES OF JOHN H. BOONE

SEYMOUR S. GOLDBERG
SEYMOUR S. GOLDBERG LAW CORPORATION

By John H. Boone
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NATIONAL BASKETBALL ASSOCIATION

UNIFORM PLAYER CONTRACT

THIS AGREEMENT made this 9th day of September, 19 71 by and between CALIFORNIA SPORTS, INCORPORATED / LOS ANGELES LAKERS (hereinafter called the "Club"), a member of the National Basketball Association (hereinafter called the "Association") and WILTON N. CHAMBERLAIN whose address is shown below (hereinafter called the "Player").

WITNESSETH:

In consideration of the mutual promises hereinafter contained, the parties hereto promise and agree as follows:

1. The Club hereby employs the Player as a skilled basketball player for the term of two years from the 1st day of October 19 71. The Player's employment shall include attendance at training camp, playing the games scheduled for the Club's team during the schedule season of the Association, playing all exhibition games scheduled by the Club during and prior to the schedule season, and playing the playoff games subsequent to the schedule season. Players other than rookies will not be required to attend training camp earlier than four weeks prior to the first game of the Club's schedule season. Rookies may be required to attend training camp at an earlier date. Exhibition games shall not be played on the three days prior to the opening of a team's regular season schedule, nor on the day prior to a regularly scheduled game, nor on the day prior to and the day following the All Star Game. Exhibition games prior to the schedule season shall not exceed twelve (including intra-squad games for which admission is charged) and exhibition games during the regularly scheduled season shall not exceed three.

2. The Club agrees to pay the Player for rendering services described herein the sum of $ 200,000 per year (less all amounts required to be withheld from salary by Federal, State and local authorities and exclusive of any amount which the Player shall be entitled to receive from the Players' Playoff Pool), in addition to equal semi-monthly payments beginning with the first of said payments on November 1st of the season above described and continuing with such payments on the first and fifteenth of each month until said sum is paid in full; provided however, if the Club does not qualify for the playoffs, the payments due subsequent to the conclusion of the schedule season shall become due and payable immediately after the conclusion of the schedule season. plus other consideration

3. The Club agrees to pay all proper and necessary expenses of the Player, including the reasonable board and lodging expenses of the Player while playing for the Club "on the road" and during training camp if the Player is not then living at home. The Player, while "on the road" (and at training camp only if the Club does not pay for meals directly) shall be paid $19.00 per day as meal expense allowance. In addition, the Club agrees to pay $50.00 per week to the Player for the four weeks prior to the first game of the Club's schedule season that the Player is either in attendance at training camp or engaged in playing the exhibition schedule.

4. The Player agrees to observe and comply with all requirements of the Club respecting conduct of its team and its players, at all times whether on or off the playing floor. The Club may, from time to time during the continuance of this contract, establish reasonable rules for the government of its players "at home" and "on the road", and such rules shall be part of this contract as fully as if herein written and shall be binding upon the Player; for any violation of such rules or for any conduct impairing the faithful and thorough discharge of the duties incumbent upon the Player, the Club may impose reason-

EXHIBIT "A"

able fines upon the Player and deduct the amount thereof from any money due or to become due to the Player. The Club may also suspend the Player for violation of any rules so established, and during such suspension the Player shall not be entitled to any compensation under this contract. When the Player is fined or suspended, he shall be given notice in writing, stating the amount of the fine or the duration of the suspension and the reason therefor. Disputes under this paragraph shall be resolved in the manner provided for in paragraph 21 hereof.

5. The Player agrees (a) to report at the time and place fixed by the Club in good physical condition; (b) to keep himself throughout the entire season in good physical condition; (c) to give his best services, as well as his loyalty to the Club, and to play basketball only for the Club and its assignees; (d) to be neatly and fully attired in public and always to conduct himself on and off the court according to the highest standards of honesty, morality, fair play and sportsmanship; and (e) not to do anything which is detrimental to the best interests of the Club or of the Association or of professional sports.

6. If the Player, in the sole judgment of the physician designated for that purpose by the Club, is not in good physical condition at the date of his first scheduled game for the Club, or if, during the season, he fails to remain in good physical condition, which condition results directly from playing basketball for the Club, so as to render him, in the sole judgment of the Club's physician, unfit to play skilled basketball, the Club shall have the right to suspend such Player until such time as, in the sole judgment of the Club's physician, the Player is in sufficiently good physical condition to play skilled basketball, and in the event of such suspension, the annual sum payable to the Player shall be reduced in the same proportion as the length of the period of disability during which, in the sole judgment of the Club's physician, the Player is unfit to play skilled basketball, bears to the length of the season. If the Player is injured as a direct result of participating in any basketball practice or game played for the Club, the Club will pay the Player's reasonable hospitalization until he is discharged from the hospital and his reasonable medical expenses and doctor's bills, provided the hospital and the doctor are selected by the Club, and provided further, that the Club's obligation to pay said medical expenses and said doctor's bills shall terminate at a period not exceeding eight (8) weeks after the injury. If, in the sole judgment of the physician designated for that purpose by the Club, the Player's injuries resulted directly from playing for the Club and render him unfit to play skilled basketball, then, so long as such unfitness continues but in no event beyond the term of one year referred to in paragraph 1 of this agreement, the Club shall pay to the Player the compensation prescribed in paragraph 2 of this agreement. The Club's obligations hereunder shall be reduced by any workmen's compensation benefits and any insurance provided for by the Club whether paid or payable to the Player, and the Player hereby releases the Club from any and every other obligation or liability arising out of any such injuries.

7. The Player agrees to give to the Club's coach, or to the Club's physician, immediate notice of any injury suffered by him, followed by written notice thereof within 48 hours after such injury occurs, each such written notice to state the time, place, cause and nature of such injury.

8. Should the Player become disabled as provided in the preceding section, he will submit himself to a medical examination and treatment by a physician designated by the Club. Such examination when made at the request of the Club shall be at its expense, unless made necessary by some act or conduct of the Player contrary to the terms of this contract.

9. The Player represents and agrees that he has extraordinary and unique skill and ability as a basketball player, that the services to be rendered by him hereunder cannot be replaced or the loss thereof adequately compensated for in money damages, and that any breach by the Player of this contract will cause irreparable injury to the Club and to its assignees. Therefore, the Player agrees that in the event of a breach of this contract by the Player, the Club and its assignees (in addition to any other remedies that may be available to them judicially or by way of arbitration) shall have the right to obtain from any court or arbitrator having jurisdiction, such equitable relief as may be appropriate, including a decree enjoining any further breach of this contract, and enjoining the Player from playing basketball

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for any other person, firm, corporation or organization during the term of this contract. In any suit, action or arbitration proceeding brought to obtain such relief, the Player does hereby waive his right, if any, to trial by jury, and does hereby waive his right, if any, to interpose any counterclaim or set-off for any cause whatever.

10. The Club shall have the right to sell, exchange, assign or transfer this contract to any other professional basketball club and the Player agrees to accept such sale, exchange, assignment or transfer and to faithfully perform and carry out this contract with the same force and effect as if it had been entered into by the Player with the assignee club instead of with this Club.

11. In the event that the Player's contract is sold, exchanged, assigned or transferred to any other professional basketball club, all reasonable expenses incurred by the Player in moving himself and his family from the home city of the Club to the home city of the club to which such sale, exchange, assignment or transfer is made, as a result thereof, shall be paid by the assignee club. Such assignee club hereby agrees that its acceptance of the assignment of this contract constitutes agreement on its part to make such payment.

12. In the event that the Player's contract is assigned to another club the Player shall forthwith be notified orally or by a notice in writing, delivered to the Player personally or delivered or mailed to his last known address, and the Player shall report to the assignee club within forty-eight hours after said notice has been received or within such longer time for reporting as may be specified in said notice. If the Player does not report to the club to which his contract has been assigned within the aforesaid time, the Player may be suspended by such club and he shall lose the sums which would otherwise be payable to him as long as the suspension lasts.

13. The Club will not pay and the Player will not accept any bonus or anything of value for winning any particular Association game or series of games or for attaining a certain position by the Club's team in the standing of the league operated by the Association as of a certain date, other than the final standing of the team.

14. This contract shall be valid and binding upon the Club and the Player immediately upon its execution. The Club agrees to file a copy of this contract with the Commissioner of the Association prior to the first game of the schedule season or within forty-eight (48) hours of its execution, whichever is later; provided, however, the Club agrees that if the contract is executed prior to the start of the schedule season and if the Player so requests, it will file a copy of this contract with the Commissioner of the Association within thirty (30) days of its execution, but not later than the date hereinabove specified. If pursuant to the Constitution and By-Laws the Commissioner disapproves this contract within ten (10) days after the filing thereof in his office, this contract shall thereupon terminate and be of no further force or effect and the Club and the Player shall thereupon be relieved of their respective rights and liabilities thereunder.

15. The Player and the Club acknowledge that they have read and are familiar with Section 35 of the Constitution of the Association, a copy of which, as in effect on the date of this Agreement, is attached hereto. Such section provides that the Commissioner and the Board of Governors of the Association are empowered to impose fines upon the player and/or upon the Club for causes and in the manner provided in such section. The Player and the Club, each for himself and itself, promises promptly to pay to the said Association each and every fine imposed upon him or it in accordance with the provisions of said section and not permit any such fine to be paid on his or its behalf by anyone other than the person or club fined. The Player further authorizes the Club to deduct from his salary payments any fines imposed on or assessed against him.

16. Notwithstanding any provisions of the Constitution or of the By-Laws of the Association, it is agreed that if the Commissioner of the Association shall, in his sole judgment, find that the Player has bet, or has offered or attempted to bet, money or anything of value on the outcome of any game partici-

pated in by any club which is a member of the Association, the Commissioner shall have the power in his sole discretion to suspend the Player indefinitely or to expel him as a player for any member of the Association and the Commissioner's finding and decision shall be final, binding, conclusive and unappealable. The Player hereby releases the Commissioner and waives every claim he may have against the Commissioner and/or the Association, and against every member of the Association, and against every director, officer, stockholder, trustee and partner of every member of the Association, for damages and for all claims and demands whatsoever arising out of or in connection with the decision of the Commissioner.

17. The Player and the Club acknowledge and agree that the Player's participation in other sports may impair or destroy his ability and skill as a basketball player. The Player and the Club recognize and agree that the Player's participation in basketball out of season may result in injury to him. Accordingly, the Player agrees that he will not engage in professional boxing or wrestling; and that, except with the written consent of the Club, he will not engage in any game or exhibition of basketball, football, baseball, hockey, lacrosse, or other athletic sport, under penalty of such fine and suspension as may be imposed by the Club and/or the Commissioner of the Association. Nothing contained herein shall be intended to require the Player to obtain the written consent of the Club in order to enable the Player to participate in, as an amateur, the sport of golf, tennis, handball, swimming, hiking, softball or volleyball.

18. The Player agrees to allow the Club or the Association to take pictures of the Player, alone or together with others, for still photographs, motion pictures or television, at such times as the Club or the Association may designate, and no matter by whom taken may be used in any manner desired by either of them for publicity or promotional purposes. The rights in any such pictures taken by the Club or by the Association shall belong to the Club or to the Association, as their interests may appear. The Player agrees that, during the playing season, he will not make public appearances, participate in radio or television programs or permit his picture to be taken or write or sponsor newspaper or magazine articles or sponsor commercial products without the written consent of the Club, which shall not be withheld except in the reasonable interests of the Club or professional basketball. In addition to the foregoing, the Player agrees to participate, upon request, in all other reasonable promotional activities of the Club and the Association.

19. The Player agrees that he will not, during the term of this contract, directly or indirectly entice, induce, persuade or attempt to entice, induce or persuade any player or coach who is under contract to any member of the Association to enter into negotiations for or relating to his services as a basketball player or coach, nor shall he negotiate for or contract for such services, except with the prior written consent of such member of the Association. Breach of this paragraph, in addition to the remedies available to the Club, shall be punishable by fine to be imposed by the Commissioner of the Association and to be payable to the Association out of any compensation due or to become due to the Player hereunder or out of any other moneys payable to him as a basketball player. The Player agrees that the amount of such fine may be withheld by the Club and paid over to the Association.

20. (a) If the Club shall default in the payments to the Player provided for in paragraph 2 hereof or shall fail to perform any other material obligation agreed to be performed by the Club hereunder, the Player shall notify both the Club and the Association in writing of the facts constituting such default or failure. If neither the Club nor the Association shall cause such default or failure to be remedied within ten (10) days after receipt of such written notice, the Player shall have the right, by a further written notice to the Club and Association, to terminate this contract.

(b) The Club may terminate this contract upon written notice to the Player (but only after complying with the waiver procedure provided for in subparagraph (f) of this paragraph 20) if the Player shall do any of the following:

(1) at any time, fail, refuse or neglect to conform his personal conduct to standards of good citizenship, good moral character and good sportsmanship, to keep himself in first class physical condition or to obey the Club's training rules; or

(2) at any time during the year, except during the period from February 2 through April 30 of any year, fail, in the sole opinion of the Club's management, to exhibit sufficient skill or competitive ability to qualify to continue as a member of the Club's team; or

(3) at any time, fail, refuse or neglect to render his services hereunder or in any other manner materially breach this contract.

(c) If this contract is terminated by the Club by reason of the Player's failure to render his services hereunder due to disability resulting directly from injury sustained in the course and within the scope of his employment hereunder and written notice of such injury is given by the Player as provided herein, the Player shall be entitled to receive his full salary for the season in which the injury was sustained, less all workmen's compensation benefits and any insurance provided for by the Club paid or payable to the Player by reason of said injury.

(d) If this contract is terminated by the Club during the period designated by the Club for attendance at training camp, payment by the Club of the Player's board, lodging and expense allowance during such period to the date of termination and of the reasonable travelling expenses of the Player to his home city and the expert training and coaching provided by the Club to the Player during the training season shall be full payment to the Player.

(e) If this contract is terminated by the Club during the playing season, except in the case provided for in subparagraph (c) of this paragraph 20, the Player shall be entitled to receive as full payment hereunder a sum of money which, when added to the salary which he has already received during the season, will represent the same proportionate amount of the total sum set forth in paragraph 2 hereof as the number of days of the season then past bear to the total number of days of the schedule season, plus the reasonable travelling expenses of the Player to his home.

(f) If the Club proposes to terminate this contract in accordance with subparagraph (b) of this paragraph 20, the applicable waiver procedure shall be as follows:

(1) The Club shall request the Association Commissioner to request waivers from all other clubs. Such waiver request must state that it is for the purpose of terminating this contract and it may not be withdrawn.

(2) Upon receipt of the waiver request, any other club may claim assignment of this contract at such waiver price as may be fixed by the Association, the priority of claims to be determined in accordance with the Association's Constitution or By-Laws.

If this contract is so claimed, the Club agrees that it shall, upon the assignment of this contract to the claiming club, notify the player of such assignment as provided in paragraph 12 hereof, and the Player agrees he shall report to the assignee club as provided in said paragraph 12.

(4) If the contract is not claimed, the Club shall promptly deliver written notice of termination to the Player at the expiration of the waiver period.

(5) To the extent not inconsistent with the foregoing provisions of this subparagraph (f) the waiver procedures set forth in the Constitution and By-Laws of the Association shall govern.

(g) Upon any termination of this contract by the Player, all obligations of the Club to pay compensation shall cease on the date of termination, except the obligation of the Club to pay the Player's compensation to said date.

21. In the event of any dispute arising between the Player and the Club relating to any matter arising under this contract, or concerning the performance or interpretation thereof (except for a dispute arising under paragraph 9 hereof), such dispute shall (by notice in writing given to the other party and to the Commissioner of the Association) first be submitted to the Commissioner or a person designated

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by the Commissioner in writing for such purpose, acting as a mediator. No other action shall be taken with respect to such dispute for a period of 30 days following the date of such submission for mediation. If mediation is unsuccessful, the parties shall have a period of 15 days to agree on a method of arbitration. In the absence of such agreement, either party shall have the right to bring an action with respect to such dispute in a State or Federal court of competent jurisdiction of the county or district whose territorial jurisdiction includes the home city in which the Club is located. Such action shall be forever barred unless brought within one year from the date when the alleged dispute arose. Each of the parties does hereby waive his and its right to trial by jury in any such action. Each party shall have the right to designate a representative to appear before the Commissioner on its behalf.

22. On or before September 1 next following the last playing season covered by this contract and renewals and extensions thereof, the Club may tender to the Player a contract for the next succeeding season by mailing the same to the Player at his address shown below, or if none is shown, then at his address last known to the Club. If the Player fails, neglects or omits to sign and return such contract to the Club so that the Club receives it on or before October 1st next succeeding, then this contract shall be deemed renewed and extended for the period of one year, upon the same terms and conditions in all respects as are provided herein, except that the compensation payable to the Player shall be the sum provided in the contract tendered to the Player pursuant to the provisions hereof, which compensation shall in no event be less than [illegible] of the compensation payable to the Player for the last playing season covered by this contract and renewals and extensions thereof. *(see reverse)

The Club's right to renew this contract, as herein provided, and the promise of the Player not to play otherwise than for the Club and its assignees, have been taken into consideration in determining the amount of compensation payable under paragraph 2 hereof.

23. Nothing contained in this agreement or in any provision of the Constitution or By-Laws of the Association shall be construed to constitute the Player a member of the Association or to confer upon him any of the rights or privileges of a member thereof.

24. This agreement contains the entire agreement between the parties and there are no oral or written inducements, promises or agreements except as contained herein.

The parties agree that any provision of this agreement covered by the presidential order announced on Auguest 15, 1971 shall be effective subject to and only when it conforms with said order or subsequent directives applic thereto.

EXAMINE THIS CONTRACT CAREFULLY BEFORE SIGNING IT

IN WITNESS WHEREOF the Player has hereunto signed his name and the Club has caused this contract to be executed by its duly authorized officer.

WITNESSES:

Los Angeles Lakers

By Fred Slaughter

Title: Gen. Mgr.

Player

RECEIVED & RECORDED

NOV 10 1971

COMMISSIONER

Player's Address 15216 Castle Dr.

Los Angeles, Calif 90024

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Not withstanding the foregoing provisions, nothing contained herein shall be construed as in any way amending, modifying or abridging the provisions of paragraph #22 of the NBA Uniform Player Contract (except with respect to the amount of compensation to be paid to the player after the last playing season covered by this contract).

680(v)

EXCERPT FROM CONSTITUTION OF THE ASSOCIATION

MISCONDUCT OF OFFICIALS AND OTHERS

35. (a) The provisions of this Section shall govern all members, and officers, managers, coaches, players and other employees of a member, and all officials and other employees of the Association, all hereinafter referred to as "persons." Each member shall provide and require in every contract with any of its officers, managers, coaches, players or other employees that they shall be bound and governed by the provisions of this Section. Each member, at the direction of the Board of Governors or the Commissioner, as the case may be, shall take such action as the Board or the Commissioner may direct in order to effectuate the purposes of this Section.

(b) The Commissioner shall direct the dismissal and perpetual disqualification from any further association with the Association or any of its members, of any person found by the Commissioner after a hearing to have been guilty of offering, agreeing, conspiring, aiding or attempting to cause any game of basketball to result otherwise than on its merits.

(c) Any person who gives, makes, issues, authorizes or endorses any statement having, or designed to have, an effect prejudicial or detrimental to the best interests of basketball or of the Association or of a member or its team, shall be liable to a fine not exceeding $1,000, to be imposed by the Board of Governors. The member whose officer, manager, coach, player or other employee has been so fined shall pay the amount of the fine should such person fail to do so within ten (10) days of its imposition.

(d) If in the opinion of the Commissioner any other act or conduct of a person at or during a pre-season, championship, playoff or exhibition game has been prejudicial to or against the best interests of the Association or the game of basketball, the Commissioner shall impose upon such person a fine not exceeding $1,000 in the case of a member, officer, manager or coach of a member, or $500 in the case of a player or other employee, or may order for a time the suspension of any such person from any connection or duties with pre-season, championship, playoff or exhibition games, or he may order both such fine and suspension.

(e) The Commissioner shall have the power to suspend for a definite or indefinite period, or to impose a fine not exceeding $1,000, or inflict both such suspension and fine upon any person who, in his opinion, shall have been guilty of conduct prejudicial or detrimental to the Association.

(f) The Commissioner shall have the power to levy a fine of $1,000 upon any Governor or Alternate Governor who, in the opinion of the Commissioner, has been guilty of making statements to the press damaging to the Association.

(g) Any person who, directly or indirectly, entices, induces, persuades or attempts to entice, induce, or persuade any player, coach, trainer, general manager or any other person who is under contract to any other member of the Association to enter into negotiations for or relating to his services or negotiates or contracts for such services shall, on being charged with such tampering, be given an opportunity to answer such charges after due notice and the Commissioner shall have the power to decide whether or not the charges have been sustained; in the event his decision is that the charges have been sustained, then the Commissioner shall have the power to suspend such person for a definite or indefinite period, or to impose a fine not exceeding $5,000, or inflict both such suspension and fine upon any such person.

(h) Any person who, directly or indirectly, wagers money or anything of value on the outcome of any game played by a team in the league operated by the Association shall, on being charged with such wagering, be given an opportunity to answer such charges after due notice, and the decision of the Commissioner shall be final, binding and conclusive and unappealable. The penalty for such offense shall be within the absolute and sole discretion of the Commissioner and may include a fine, suspension, expulsion and/or perpetual disqualification from further association with the Association or any of its members.

(i) Except for a penalty imposed under subparagraph (h) of this paragraph 35, the decisions and acts of the Commissioner pursuant to paragraph 35 shall be appealable to the Board of Governors who shall determine such appeals in accordance with such rules and regulations as may be adopted by the Board in its absolute and sole discretion.

680 (x)

TO: National Basketball Players Association

This is to authorize you to retain Lawrence Fleisher to initiate one or more class actions on my behalf against the National Basketball Association, and any other entities that you deem necessary or desirable, in order to bring about an end to any agreement among the clubs or other entities to eliminate competition among them in the acquisition of talent, including the prevention of the proposed merger between the NBA and the ABA.

In addition, you are hereby authorized to instruct Mr. Fleisher to assert a claim for damages on my behalf.

Dated: 3/15/70 Walter F. Chamberlain

003000

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al.,

Plaintiffs,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants.

70 CIV. 1526 (RLC)

MEMORANDUM OF POINTS AND AUTHORITIES ON BEHALF OF WILTON N. CHAMBERLAIN IN OPPOSITION TO THE MOTION BY THE NATIONAL BASKETBALL ASSOCIATION FOR A PRELIMINARY INJUNCTION

Counsel for Wilton N. Chamberlain, appearing specially before this Court for the purpose of this hearing only, submit this Memorandum of Points And Authorities In Opposition to the Motion by the National Basketball Association For A Preliminary Injunction restraining Wilton N. Chamberlain, his agents and attorneys from prosecuting the action entitled Wilton N. Chamlain v. National Basketball Association, et al. (75-Civ-4258) in the United States District Court for the Central District of California. Respondent respectfully requests that this Court deny the Motion for a Preliminary Injunction.

Respondent respectfully submits that this Court should not enjoin Mr. Chamberlain from the prosecution of the action in the United States District Court for the Central District of California because

(I) that proceeding is based upon causes of action which are separate and distinct from the action before this court;

(II) the issues involved in the California proceeding are unlike those before this court; and

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(III) enjoining respondent would result in manifest injustice to him by denying him adequate time for discovery on the issues which are unique to his separate causes of action, or, alternatively, prejudice the other class members, by delaying the trial scheduled for June 1, 1976, on the cause of action and issues which are common to them.

Furthermore, this Court should not restrain or enjoin respondent for prosecuting his California proceeding because his maintenance thereof is not vexatious and oppressive to defendants therein and therefore does not amount to the extraordinary circumstances which might permit this Court to invoke its equity powers.

Finally, it is respectfully suggested that this Court is without power to enjoin or restrain respondent on the basis of Mr. Chamberlain's class membership in the action before this Court, because this Court does not have personal jurisdiction over unnamed plaintiff class members.

I.

THE CAUSES OF ACTIONS AND ISSUES IN THE CALIFORNIA ACTION ARE SEPARATE AND DISTINCT FROM THE CAUSES OF ACTION AND ISSUES IN THE ROBERTSON CASE

The instant motion for a preliminary injunction should be denied because the California proceedings instituted by respondent are based upon causes of action which are different from the class action before this Court (Boone Aff. p.2, par. 2).

The law is clear that an antitrust cause of action accrues at the time injury is sustained as a result of illegal activity, McClellan v. Montana-Dakota Utilities Co., 204 F.2d 166,169 (8th Cir. 1953); Momand v. Universal Film Exchanges,

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172 F.2d 37,49 (1st Cir. 1948); Burnham Chemical Co. v. Borax Consolidated, Ltd., 170 F.2d 569,576-577 (9th Cir. 1948); Charles Rubenstein, Inc. v. Columbia Pictures Corporation, 154 F. Supp. 216,219 (D. Minn. 1957); and that an injury sustained as a result of different illegal acts and at a later date gives rise to a new and separate cause of action. Lawlor v. National Screen Service Corporation, 349 U.S. 322,237-328, 1955 TRADE CAS. ¶68,016 (1955); Exhibitors Poster Exchange, Inc. v. National Screen Service Corporation, 1970 TRADE CAS. ¶73,053 (5th Cir. 1970); International Railways of Central America v nited Fruit Company, 1967 TRADE CAS. ¶71,987 (2d Cir. 1967).

In Lawlor v. National Screen Service Corporation, supra, Lawlor sued National and three motion picture producers in 1942 for alleged conspiracy to monopolize the distribution of "standard accessories" by means of exclusive licenses. The complaint alleged also that National was negotiating with other producers to procure similar licenses. The relief prayed for was damages and an injunction. The case was settled and accordingly dismissed with prejudice in 1943.

In 1949 Lawlor again sued National, the three prior producer defendants in the 1942 action, and also sued five other motion picture producers. He alleged that the new parties had exclusively licensed National after settlement of the 1942 action, and that the same conspiracy charged in 1942 was essentially continued with the addition of the new defendants. Lawlor prayed for relief in the form of damages and an injunction, the same type of relief asked for in the first suit. In 1953, the District Court dismissed Lawlor's action on the grounds of res judicata, finding that Lawlor was barred by the action brought in 1942. The Court of Appeals affirmed. On certiorari, the Supreme Court reversed and remanded, holding that the actions alleged constituted a new

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cause of action. The Court stated:

> "That both suits involved "essentially the same course of wrongful conduct" is not decisive. Such a course of conduct - for example, an abatable nuisance - may frequently give rise to more than a single cause of action. And so it is here. The conduct presently complained of was all subsequent to the 1943 judgment. In addition, there are new antitrust violations alleged here - deliberately slow deliveries and tie-in sales, among others - not present in the former action. While the 1943 judgment precludes recovery on the claims arising prior to its entry, it cannot be given the effect of extinguishing claims which did not even then exist and which could not possibly have been sued upon in the previous case." Id. at 327-328 (footnotes omitted).

For the same reasons the California proceeding here in question is based upon separate causes of action which are unique to Mr. Chamberlain, and cannot possible constitute the "assault upon the jurisdiction of this court" which movants have alleged. The acts and occurrences which caused the injuries alleged by Chamberlain occurred after the filing of the class action and the class certification and notice. (Boone Aff. par. 4; Cardozo Aff. Ex. D, p.1). Chamberlain was not injured by those acts until after the class notice had been received. (Cardozo Aff., Ex. C,D, E). Mr. Chamberlain's causesof action, based upon the defendants' antitrust violations by adopting and applying an "indemnification rule" and the Lakers' breach of contract, are clearly new and separate claims which are distinct from those brought in this action before this Court.

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The issues in the class action before this Court, to the extent they concern Mr. Chamberlain, essentially relate to his injury as a result of the defendants' creation and enforcement of the "compensation" rule; a rule which essentially requires that if a player plays out his contract with club A, including his option year, and then signs with club B as a "free agent", club B must compensate club A. (Rothenberg Depo.; Boone Aff. Ex. A).

The issues in Robertson case and Mr. Chamberlain's possible claims therein as a class member do not involve the same actions or violations as those alleged in the California action. In the Robertson case, Mr. Chamberlain's injuries and claims arose while he was a player with NBA member teams between 1959 and 1973. Mr. Chamberlain's injuries and causes of action in the California case were sustained in 1975, after Mr. Chamberlain sat out his option year (1973-74 season). Mr. Chamberlain's claim in the California case did not arise until the NBA and the Lakers adopted a new rule applicable to Mr. Chamberlain which required any member team desiring to contract with Mr. Chamberlain to indemnify the Los Angeles Lakers for the loss of one year's playing. This did not occur until sometime in September or October of 1975 when the New York team expressed an interest in Mr. Chamberlain's services. When Mr. Chamberlain learned that Los Angeles claimed he still owed a year to Los Angeles, he offered to return to the Lakers and begin training, was refused, and was thereafter unable to sign with any other club, since, under the terms of the illegal conspiracy and boycott by the defendants, a club which signed him would be required to indemnify the Lakers for their loss of his services. (Goldberg Affidavit, filed separately).

The California actions are not based upon the "compensation rule" because Chamberlain was neither a free agent nor did he

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play out his option year. Rather, Chamberlain has two causes of action separate and distinct from those before this Court. There is clearly an antitrust claim against the defendants for their illegal conspiracy and concerted boycott against Mr. Chamberlain. There may also be a separate action against the Lakers for breach of contract.

Furthermore, movants have clearly admitted, by both word and conduct, that the claims prosecuted in Mr. Chamberlain's action arose after the time discovery had been completed in the Robertson action and that there is no identity of the issues in two cases. (Boone Aff. par. 3, Ex. A).

Since Chamberlain's California action is based upon separate causes of action, it poses no threat to the jurisdiction of this Court. There is no danger that defendants would be subjected to inconsistent adjudications, since the issues to be decided in the California action differ from those which this Court must decide. Furthermore, the California case is not a class action. The facts therein are peculiar to Mr. Chamberlain, and the case cannot, therefore, pose any threat to this Court's class action determination. Movants cannot support their claim that the California action constituted an "assault" upon this Court's jurisdiction, and they are not entitled to an extraordinary order from this Court enjoining the prosecution thereof.

II.

AN INJUNCTION WOULD RESULT IN MANIFEST INJUSTICE TO MR. CHAMBERLAIN OR, ALTERNATIVELY, UNFAIR DELAY TO THE CLASS OF PLAINTIFFS BEFORE THIS COURT IN THE ROBERTSON ACTION

Contrary to the unsupported allegations in movants' affidavit, the record in the class action before this Court shows that no discovery has been had pertaining to the "indemnification" rule. (Boone Aff. par. 3, 4, 5; Ex. A).

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Were this Court to enjoin respondent from prosecution of his action in California, it would effectively require him to consolidate his causes of action with those presently scheduled for trial before this Court on June 1, 1975. To do so would work injustice for the following reasons. If respondent were required to go to trial on June 1, 1975, without pretrial discovery as to the distinctly different causes of action he possesses, this Court would effectively be forcing him to trial without benefit of discovery, a clearly unjust result. On the other hand, should this Court postpone the trial in order to permit respondent to obtain the pretrial discovery which justice requires, the numerous class members would be forced to suffer a further delay of the trial of their action which is already over five years old.

Clearly the results occasioned by this Court's exercise of its power to enjoin, should it decide to issue the preliminary injunction in question, would require respondent to consolidate his case with the Robertson case, with inevitably inequitable results. The use of an injunction to achieve such results would constitute an unfair abuse of this Court's equitable power. Where, as here, no compelling reasons have been or can be shown which might sustain an injunction necessarily resulting in such manifest injustice, all equitable considerations require that the injunction be denied.

III.

MOVANTS HAVE NOT MADE THE REQUISITE FACTUAL SHOWING TO PERMIT THIS COURT TO EXERCISE ITS EQUITABLE POWER OF INJUNCTIVE RELIEF

In the affidavit in support of the NBA defendants' motion for a temporary restraining order and preliminary injunction, movants here failed to allege any facts showing that continued prosecution of the California action will result in immediate, substantial or irreparable injury to them. The affidavit of

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Michael A. Cardozo fails to contain even the bare allegation of immediate, substantial, or irreparable injury, let alone allusions to factual support.Mr. Cardozo's affidavit simply states that Mr. Chamberlain's continued prosecution of the California action "is no more than a complete and utter assault on the jurisdiction of this Court and the Court's class action certification." (Cardozo Substantive Aff., p. 2, par. 2). Nowhere does it appear in their moving papers that the NBA has shown the irreparable, immediate or substantial injury upon which the extraordinary relief of a preliminary injunction can be based. Moreover, neither the proposed Court order nor the moving papers of the NBA reveal the requisite allegations and facts supporting the invocation of the Court's traditional equity powers to restrain the prosecution of a proceeding in another court.

The California action brought by Mr. Chamberlain, like the class action before this Court, is an action in personam. Assuming, arguendo, that Chamberlain is a party to the class action before this Court (which he is not, see Part IV, infra), the rule is well established that two or more actions in personam between the same parties and involving the same subject matter may proceed concurrently in the courts of two or more forums. 1A Pt.2 MOORE'S FEDERAL PRACTICE 2d ¶0.219, p. 2601. Even if the California action involved some of the same subject matter as the New York action, this is not sufficient reason for this Court to restrain and enjoin the prosecution of the former. On this subject Professor Moore states:

> "Since two or more in personam actions may proceed concurrently, the pendency of an in personam class action would normally not be a sufficient basis for enjoining the institution of another in personam class action, either by the same representatives or

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> by other members of the class, or for enjoining the institution of individual actions by individual members of the class." 3B MOORE'S FEDERAL PRACTICE 2d ¶23.92, p. 23-1751 (footnote omitted).

Professor Moore goes on to state that in the abnormal situations which might justify a court's injunction to stay proceedings in other courts, the Court relies upon its historic equity powers. Id. Those powers include

> ". . . the power to enjoin a party from proceeding in another court because this proceeding circumvents the policy of the forum issuing the injunction; because it is vexatious and oppressive; where injunction is necessary to protect the court's in rem or quasi in rem jurisdiction; and in other situations where equitable considerations warrant preclusion of the other proceeding." 7 MOORE'S FEDERAL PRACTICE 2d ¶65.19, pp. 65-141. (emphasis added)

None of the considerations stated above apply to this proceeding. Respondents have shown above that the causes of action stated in the California complaint pose no possible threat to this Court's jurisdiction and class determination in the action before it. Respondents have further indicated that no possible conflict between the actions is intended and that the California complaint will be amended to eliminate therefrom the allegations relating to the causes of action accruing to Chamberlain prior to 1975. (Boone Aff., par. 6).

The mere fact that a class member is involved in separate litigation over similar subject matter is not cause for a court

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to enjoin prosecution of that separate action. See, Weeks v. Bareco Oil Company, 125 F.2d 84, 94-95 (7th Cir. 1941). In Technograph Printed Circuits, Ltd. v. Methode Electronics, 285 F.Supp. 714 (N.D. Ill. 1968), plaintiffs had initiated 74 civil actions for patent infringement against approximately 80 manufacturers of electrical equipment. The actions were pending in eighteen different districts and one was pending in the Court of Claims. The parties sought to convert the action in Illinois to a class action under Federal Rule 23(b)(3) because there were, in all, 240 alleged infringers of the plaintiffs' patents. The court permitted class certification and indicated that no interference would be occasioned by permitting the separate actions to continue to judgment. The court held that conclusion of those actions would simply cause those defendants to be excluded from the subclass.

A similar result occurred in Kronenberg v. Hotel Governor Clinton, Inc., 281 F.Supp. 622 (S.D.N.Y. 1968). In that action plaintiffs were permitted to maintain a Rule 23(b)(3) class action on behalf of persons who had purchased shares, notes and debentures issued by the defendant. The court found that the concurrent prosecution of separate actions in the state courts by individual plaintiffs did not necessarily preclude maintenance of the federal action as a class action. Those class members whose state actions remained active were given the option to exclude themselves from the class by the court order certifying the class action. Id. at 624.

While the class action before this Court is admittedly one under Federal Rule 23(b)(1), that distinction should make no difference with regard to the instant proceeding. The separate actions which were in issue in the two cases discussed above, Technograph and Kronenberg, did not interfere with the court's

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jurisdiction or class certification because the separate litigants could be excluded from the class upon conclusion of their separate cases. Likewise, the Chamberlain case in California cannot interfere with this Court's jurisdiction or class certification, not because he can opt out of the class, but because the California case is based upon a separate cause of action and issues unique to Chamberlain alone, and is therefore a fortiori excluded from the class action questions before this Court. Movants have not and cannot allege or show that respondents have in any way circumvented or intended to circumvent any conceivable policy of this forum by the prosecution of the California action.

For the same reasons, movants have not and cannot represent to this Court that the injunction they seek may be justified on grounds that the California proceeding is vexatious and oppressive. That action is validly concerned with a cause of action which accrued to Mr. Chamberlain at a later date than the causes of action before this Court. It is a separate and distinct case which concerns acts and violations by defendants which are unique to Mr. Chamberlain. Movants simply cannot allege or show that the California action is or is intended to be vexatious or oppressive to them. They were unable to make any such allegations or adduce any facts in support thereof when seeking the temporary restraining order, and they cannot do so now.

Similarly, none of the other bases of a court's exercise of its equity powers to enjoin a person from proceeding in another court apply to this action. Both actions are in personam and this Court has no in rem or quasi in rem jurisdiction to protect. In addition, no other equitable considerations warrant this Court's preclusion of the California proceeding. To the contrary, respondents have demonstrated above that equity requires

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that this Court not enjoin the California proceeding lest it work inequity and manifest injustice upon either respondent or the class of players already before the court.

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IV. A PERSON MUST BE A PARTY AND NOT MERELY A CLASS MEMBER TO THE ACTION IN ORDER FOR A COURT TO ENJOIN HIM

The general nature of an action or proceeding for an injunction is in personam and a court must have in personam jurisdiction over the person against whom the injunction runs. 7 MOORE'S FEDERAL PRACTICE 2d. ¶65.03[3], p. 65-31. The authorities are well settled that a court may not enjoin or restrain persons who are not parties to the action before the court. ESP Fidelity Corporation v. Department of Housing and Urban Development, 512 F.2d 887, 890 (9th Cir. 1975); Saxe v. United States, 471 F.2d 1293, 1298 (2nd Cir. 1974); Heyman v. Kline, 444 F.2d 65 (2d Cir. 1971); Bethell v. Peace, 441 F.2d 495, 498-499 (5th Cir. 1971); 7 MOORE'S FEDERAL PRACTICE 2d, Id.

In Fulton Lodge No. 2 of International Association of Machinists and Aerospace Workers, AFL-CIO v. Nix, 415 F.2d 212 (5th Cir. 1969), a union member sued his union for reinstatement. The District Court, inter alia, entered an order providing for injunctive relief against both the Union and the International, although the International had not been named as a party. It did so on the grounds that the action was in the nature of a class action, and also, that the Lodge was merely an agent of the International.

On appeal, the Fifth Circuit vacated the District Court's order with regard to the International. Although the Court found that the Lodge was a creature of the International, was created by it, and was acting in response to its directives in dealing with Nix, the court found that the existence of a substantive cause of action against the International did not vest the District Court with jurisdiction over it. The court stated that the Labor Management Reporting and Disclosure Act, §102,

> ". . . permits the district court to grant such relief (including injunctions) as may be appropriate,' but this

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does not expand in personam jurisdiction beyond that arising from proper designation of a party as defendant and proper service of process upon the party. See Fed.R.Civ.P. 19(a) and 4(d)(3)." Id. at 219-220.

Similarly, in RIKO Enterprises, Inc. v. Seattle Supersonics Corporation, 357 F. Supp. 521 (S.D.N.Y. 1973), this court held, inter alia, that it could not restore the first round draft choice of college basketball players to the Seattle Supersonics by enjoining another team from exercising the choice, since Seattle could not have the choice absent NBA approval, and the NBA, not being a party to the action, could not be affected by the injunction. Id. at 526.

A.

Absent Class Members Are Not Parties To An Action For The Purposes Of An Injunction

The very purpose of class actions is to render an adjudication of issues commonly held by a group without the necessity of a massive joinder of parties. In Wainwright v. Kraftco, 54 F.R.D. 532 (N.D. Ga. 1972), defendants in an antitrust action attempted to require 146 absent class members to respond to two sets of detailed interrogatories and then sought sanctions for their failure to respond. The court denied defendant's request for sanctions and held that the written interrogatories and document requests were not properly sent to the class members because Federal Rules 23 and 24 speak only of discovery against parties. The court held that class members were not parties, stating that nothing in Rule 23 suggests such a conclusion. Rather, the court stated that Rule 23 required a contrary conclusion, since:

> "Indeed, if class members were automatically deemed parties, all class actions would be converted into massive joinders. Such a result would emasculate Rule 23." Id. at 534.

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The view that absent class members cannot be deemed parties to the action has been endorsed in another class action where the defendant officers and directors in a securities fraud action sought and were denied an order permitting the right to propound interrogatories to more than 3,000 claimants. Fischer v. Wolfinberger, 55 F.R.D. 129 (W.D. Ky. 1971). Furthermore, this Court followed the position detailed above in holding, inter alia, that absent class members in an antitrust case could not be deemed parties for the purpose of being subjected to counterclaims under Federal Rule 13. Donson Stores, Inc. v. American Bakeries Company, 58 F.R.D. 458 (S.D.N.Y. 1973). The court held that Rule 23 comtemplates an adversary contest involving only the representatives of the class, with all other members of class being permitted passively to await the outcome of the principal suit. Id. at 489.

In another case analogous to the situation before this court, Calagaz v. Calhoon, 309 F.2d 248 (5th Cir. 1962), the plaintiff sued a Mr. Kellogg individually as Executive Vice President of a Union and as class representative for the Union in an action for declaratory and injunctive relief challenging elections and other Union acts. Three days after Kellogg was served with process Kellogg died. The plaintiff then amended his complaint to substitute other class members as class representatives, and obtained substituted service under state law. The District Court dismissed the action on the ground of lack of jurisdiction and insufficiency of service of process.

On appeal, one theory Calagaz asserted was that in personam jurisdiction attached to all members of the class once service had been had upon their representative, so that he could freely substitute a successor in office or interest for the deceased class representative. The court rejected the theory as follows:

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". . . It is one thing to say that a judgment is binding upon all the members of the class; it is an entirely different thing to say that in personam jurisdiction attaches to all members of the class once such jurisdiction has been acquired over one member and service of process has been made upon him. Individual members of the class are before the court only as far as they are class members; in personam jurisdiction does not automatically attach to each member once a suitable representative has been properly served.

* * *

The plaintiff, therefore, can remain in court only if there is some basis for finding in personam jurisdiction over the other named defendants." Id. at 254.

The rationale applied by this Court in Donson Stores, Inc. supra, and by the other courts in the cases cited above, applies with equal force to the instant proceeding. Rule 65, under which the instant proceeding is brought, speaks only to injunctions against parties. (65(a)(i): "No preliminary injunction shall be issued without notice to the adverse party." 65(a)(1): This subdivision (a)(2) shall be so construed and applied to save the parties any rights they may have to trial by jury." 65(b): "A temporary restraining order may be granted without written or oral notice to the adverse party. . ." 65(c): "No restraining order . . . shall issue except upon . . . security . . . for the payment of such costs and damages as may be incurred . . . by any party who is found to have been wrongfully enjoined. . . ." 65(d): Every order granting an injunction . . . is binding only upon the parties to the action, ..." (emphasis added))

Wilt Chamberlain, as an absent member of the class before this Court, cannot be deemed a party for the purposes of Federal Rules 23, 33 and 34, Wainwright v. Kraftco, supra, Fischer v.

L. BOONE
ATTORNEY AT LAW
SUITE 3
SEATTLE 98104
583-0654

Wolfinbarger, supra, or for the purposes of Federal Rule 13. Donson Stores, Inc., American Bakeries Company, supra. Movants have not shown any valid or compelling reason for abandoning the reasoning of the cases cited above.

It follows that Mr. Chamberlain cannot be considered a party for the purposes of Rule 65, and therefore may not be enjoined by this Court.

CONCLUSION

Movants have failed to present any grounds sufficient to justify the extraordinary relief which they request from this Court. Respondent, on the other hand, has clearly shown that equity requires this Court to restrain, not the California proceeding, but any attempts by movants to interfere with the California proceeding. This Court should deny the instant motion for a preliminary injunction.

Dated: January 16, 1976

JOHN H. BOONE
DAVID M. ZEFF
LAW OFFICES OF JOHN H. BOONE

SEYMOUR S. GOLDBERG
SEYMOUR S. GOLDBERG LAW CORPORATION

By John H Boone
Attorneys for Respondent

H. BOONE
ORNEY AT LAW
GUDO BUILDING
FRANCISCO 94104

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al.,	:	
Plaintiffs,	:	70 Civ. 1526 (RLC)
-against-	:	
NATIONAL BASKETBALL ASSOCIATION, et al.,	:	AFFIDAVIT OF JOHN H. BOONE
Defendants.	:	

CITY AND COUNTY OF SAN FRANCISCO)
) ss:
STATE OF CALIFORNIA)

Comes now before the undersigned authority, duly authorized to administer oaths, JOHN H. BOONE, who, having been duly sworn, deposes and says:

1. I am one of the attorneys for Wilton N. Chamberlain in the action filed in the United States District Court for the Central District of California, CV 75-4258- AAH.

2. Other than preparing the original complaint in the case of American Basketball Association v. National Basketball Association, filed in the United States District Court for the Northern District of California, affiant has done no work on that case. Affiant has not participated in the discovery conducted in either the American Basketball Association or the Robertson cases [No. 70-CIV 1526 (RLC)]. On January 16, 1976, affiant secured copies of the portions of the depositions of Mr. Cooke, Mr. Rothenberg, and Mr. Gourdine which contained testimony concerning Mr. Chamberlain.

3. In Mr. Cardozo's Affidavit of January 8, 1976 [Cardozo Substantive Affidavit, paragraph 24, p. 10], the statement is

made, "In fact discovery has been had in this case on Mr. Chamberlain's allegations with respect to the right of the New York team of the NBA to negotiate with him." Contrary to the assertion of Mr. Cardozo, attached hereto as Exhibit A are excerpts of the depositions of Mr. Cooke and Mr. Rothenberg, wherein the deponents were asked what would happen if Mr. Chamberlain attempted to contract with an NBA team other than the Los Angeles Lakers. As shown by Exhibit A, the questions were objected to as hypothetical and the witnesses were instructed not to answer.

4. The claims upon which Mr. Chamberlain has filed his action in the United States District Court for the Central District of California did not accrue until the end of 1975. In summary, Mr. Chamberlain's action in the United States Court for the Central District of California, relates to events which, as of now, have not been a part of the Robertson or the American Basketball Association cases. Mr. Chamberlain did not have this cause of action until the end of 1975, when the Los Angeles Lakers, the NBA and the member teams thereof, adopted and applied against Mr. Chamberlain a rule which had heretofore never existed: to wit, an "indemnification rule". Mr. Rothenberg in his deposition, an excerpt of which is attached hereto as Exhibit B, took the position that Mr. Chamberlain's situation was different than the compensation rule in that Mr. Chamberlain had not played for the Los Angeles Lakers during his option year. Mr. Rothenberg further stated that such a situation had never occurred in the National Basketball Association before and, if such a situation were to occur, the NBA position was unclear.

It was not until after Mr. Rothenberg's deposition that the situation which Mr. Rothenberg stated had never occurred did occur. These later occurrences are the subject of the

action filed in the United States District Court for the Central District of California.

5. Under the "indemnification rule" the Los Angeles Lakers has a greater claim than would be the case under the compensation rule because, as Mr. Rothenberg stated in his deposition there is a "deprivation of some expectation or right and lack of full performance by the player and therefore a greater claim, if you will, than is the case where the player has performed his option year". See Exhibit C attached hereto.

6. Affiant, as attorney for Mr. Chamberlain, is prepared at the present time to amend the complaint in the Central District of California to eliminate from that complaint any allegations which might conceivably relate to any cause of action accruing prior to 1975.

Dated: January 16, 1976.

John H. Boone
JOHN H. BOONE

Subscribed and sworn to
before me this 16th day
of January, 1976.

Irene R. Kenlan
Notary Public

IRENE R. KENLAN
NOTARY PUBLIC-CALIFORNIA
CITY AND COUNTY OF
SAN FRANCISCO
My Commission Expires Aug 22, 1976

EXHIBIT A

Excerpts From Deposition of Jack Kent Cooke, taken in July and October, 1975, pp. 108, 498, 557, 558.

Excerpts From Deposition of Mr. Rothenberg, taken in July and October, 1975, pp. 221, 627

A I am testing you.

Q Why?

A Because I think you are misleading the record.

MR. STERN: If he is willing to rephrase the question --

Q If a team signed Wilt Chamberlain for next year and they did not make the equitable arrangement to offer to pay L.A., something that you referred to before, would L.A. make a claim for compensation?

MR. STERN: I am going to object to the question and direct the witness not to answer on the grounds that that's a speculative question. It hasn't happened and he doesn't have to render his opinion on non-events.

Q Has anyone from the Laker organization discussed with you what would happen if someone signed Wilt Chamberlain for next year?

A No.

Q Has anyone from the Laker organization to your knowledge including yourself, Mr. Cooke, discussed with the NBA office what would happen if someone signed Wilt Chamberlain for next year or any time?

A No, I just got down here for this deposition.

reinstated by the Commissioner.

Q Is it your view, Mr. Cooke, that if another team signed Mr. Chamberlain today, the National Basketball Association, or even attempted to sign Mr. Chamberlain today without first consulting with you and getting your permission, that that would be tampering within the bylaws and practices of the NBA?

MR. STERN: This is today you are referring to, October 27, 1975?

MR. TINKHAM: Right, today.

A I have no idea.

Q What would you do, Mr. Cooke, if someone did that?

MR. STERN: I am going to direct the witness not to answer.

MR. TINKHAM: Based on what?

MR. STERN: Based upon it being a hypothetical question, what would he do if.

You can ask him what has happened, or what he understands certain events to be, but not speculate as to what he might do if something occurred.

Q Do you happen to know whether or not

MR. STERN: I will direct the witness not to answer on the grounds of my previously asserted objection.

MR. WARREN: Mr. Stern, I refer you to page 108 of the prior transcript, in which...

BY MR. WARREN:

Q If a team signed Wilt Chamberlain for next year and they did not make equitable arrangement to pay L.A., something you referred to before, would L.A. make a claim for compensation?

MR. STERN: I am going to object to the question and direct the witness not to answer on the ground that it's a speculative question. It hasn't happened and he doesn't have to render his opinion on nonevents.

. . . I suggest that subsequent events have made this not speculative, this is something that has happened, and I don't see why that is not a proper subject of inquiry.

MR. STERN: I will permit you to ask him that question if I objected to it and you think you are entitled to an answer.

But I won't permit you to question him about events occurring subsequent to the last

deposition.

So if you would care to reask the question, you certainly may, and I will withdraw my objection to that and any other questions you may wish to ask the witness, questions that were objected to.

BY MR. WARREN:

Q In this context, did Los Angeles make any claim or statement concerning a claim to compensation to Mr. Burke?

MR. STERN: I am going to direct the witness not to answer.

MR. WARREN: You are not going to allow any questions on subsequent events?

MR. STERN: Yes.

And, frankly --

MR. WARREN: Or documents?

MR. STERN: I have no problem, if you would like to, we can call the Court now and ask for his final answer on this. Because I don't think that it is proper to question a witness about events occurring after a closed deposition, when the only reason you are here, Mr. Warren, is because Mr. Tinkham had not

for whatever reason, not to perform, is there any kind of obligation as a result of that tender and what effect, if any, does that have on compensation rights, if any? And that is the only reason for my hesitation in my statement. There is some doubt. Again, it is the case of first impression in the League and I don't know that it has been resolved.

Q Does the Lakers take the position that were Mr. Chamberlain to play in the future for another NBA team, that the Lakers would be entitled to compensation?

MR. CARDOZO: I object. It is completely hypothetical.

MR. GRUENBERGER: Mr. Stern let Mr. Cooke answer this question.

MR. CARDOZO: Okay, but I think it is a complete hypothetical question.

MR. GRUENBERGER: It certainly is not hypothetical for the reasons I will tell you.

MR. CARDOZO: Fill the record with your explanations for justification of the question.

MR. GRUENBERGER: I will ignore that snide remark.

EXAMINATION BY MR. WARREN:

Q Mr. Rothenberg, at your prior deposition, the transcript reflected, at page 221, there is a question by Mr. Gruenberger, "Does the Lakers take the position that were Mr. Chamberlain to play in the future for another NBA team, that the Lakers would be entitled to compensation?

"Mr. Cardozo: I object. It is completely hypothetical."

I would like to ask you, Mr. Rothenberg, since I believe the record will reflect that subsequent events have made that no longer hypothetical, whether the Los Angeles Lakers have engaged or representatives of the Lakers have had any discussions concerning compensation with regard to Wilt Chamberlain.

MR. STERN: You mean subsequent to his deposition?

MR. WARREN: Subsequent to his deposition.

MR. STERN: I direct the witness not to answer.

MR. WARREN: Mr. Stern, it's a kind of unusual situation. The objection is based on the fact that a state of facts is hypothetical. We are now at the point where the state of facts

EXHIBIT B

Excerpts From Deposition of Mr. Rothenberg, taken in July and October, 1975, pp. 220, 221, 229, 230, 231, 232.

Lakers preventing that.

Q In addition the Lakers won an arbitration before Mr. Sites?

A Confirming the same thing, yes.

Q Is Mr. Chamberlain's contract with the Lakers over?

MR. CARDOZO: Object to the form.

Q Has it expired, the contract?

MR. CARDOZO: Object to the form. The contract speaks for itself with respect to that.

Q You may answer.

A It is a matter of some discussion or debate, and I don't know the answer to that.

Q I thought you just testified a moment ago, Mr. Rothenberg, that the contract expires at the end of the term, which term in your words was the years he played plus the option year, and he didn't play for other teams during the option year.

A I am not contending there is any ability on the part of the Los Angeles Lakers to cause Wilt Chamberlain to play for the Los Angeles Lakers. The area, the gray area, is when you have tendered a contract to a player, which the Lakers did, and he chooses,

for whatever reason, not to perform, is there any kind of obligation as a result of that tender and what effect, if any, does that have on compensation rights, if any? And that is the only reason for my hesitation in my statement. There is some doubt. Again, it is the case of first impression in the League and I don't know that it has been resolved.

Q Does the Lakers take the position that were Mr. Chamberlain to play in the future for another NBA team, that the Lakers would be entitled to compensation?

MR. CARDOZO: I object. It is completely hypothetical.

MR. GRUENBERGER: Mr. Stern let Mr. Cooke answer this question.

MR. CARDOZO: Okay, but I think it is a complete hypothetical question.

MR. GRUENBERGER: It certainly is not hypothetical for the reasons I will tell you.

MR. CARDOZO: Fill the record with your explanations for justification of the question.

MR. GRUENBERGER: I will ignore that snide remark.

Warriors could prevent him from playing with another team for that year; did that decision involve a ruling that they had rights to him after that year?

A No.

MR. CARDOZO: Objection.

A No, not to my knowledge. When I say exclusive rights, again I don't want to get into the area which we were talking about which I characterize as a gray area, I am talking about -- there is a list of various players listed in the NBA; I think Rick Barry would have stayed on the Warriors' player list.

Q Whether negotiation or active?

A I don't know what category it would be in. And to the extent that he had become a free agent under his contract, he was free to sign with anyone, but whether I said he was exclusive property or his exclusive rights belonged to the Warriors, I am talking with reference as to what would or would not trigger some type of compensation proceeding.

Q Your position is that a player in Rick Barry's position, or Wilt Chamberlain's position, is a free agent insofar as he may sign with another team. But the question of compensation to that team, that

player on some list is open?

A Partly right and partly not right.

Q Okay.

A Still unresolved is what I said before. As far as is there a different treatment when a player plays the option year versus if he does not play the option year. I don't know the answer to that. But other than that teamed with what you say is correct.

Q Is it the Laker position that if you play the option year, there is no compensation payable to the team from whence the player came?

A No.

Q Is it the Laker position if you sit out the option year, there is no compensation payable to the team from whence the player came?

A No.

Q Forgive me then, I don't understand what you meant my question assumed a fact that was partly right or partly wrong.

A The Lakers I don't think really have a position on either question. I am saying as to the compensation in the Cazzie Russell case, where the player played out his option and under no interpretation, I am aware of, can anyone argue there was any

remaining performance obligation of any kind to his former team, that the player is free to contract with any other team in the NBA. We went through, that for a long time last night, what compensation --

Q I don't want you to repeat that.

A That is clear. It should be clear, at least on the record, as far as what the Lakers' position is. The other question, as I said, the Lakers really don't have a position I am aware of. At least I don't have a position. I am not aware of a Laker position enunciated nor have I heard the quote you showed me from Si Gourdine, NBA position. I have heard alot of discussion by people, a situation where the player does not play his option year, but sits it out, is to be treated or should be treated differently than the situation in which the player actually played out the option year.

Q In those discussions, has there been any talk of what different situations, what different rules, might apply, what different effects should occur?

A Yes, I have heard people say the player in the one case, the first player, the player plays out the option, owes nothing of any kind to his former

team and in a sense therefore, that team has a lesser claim to whatever it is they want to claim.

Whereas in the other case a team claims a deprivation of some expectation or right and lack of full performance by the player and therefore a greater claim, if you will, than in the case where the player has performed his option year.

Q Greater claim against him.

A Of right and equity.

Q Against the player or against a team with which that player signed?

A I think they have been talking about the team with which that player signs.

Q Have there been discussions in this area where the player sits out an option year, there may be some claim against the player?

A I probably have heard that too, by individual people.

Q But that issue is unresolved to date?

A That's correct, as far as I know.

Q Who are the people that have said in their view, there ought to be a claim against the player in the sit-out option year situation?

A The only one I can identify would be the

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EXHIBIT C

Excerpts From Deposition of Mr. Rothenberg, taken in July and October, 1975, pp. 213, 232.

remaining performance obligation of any kind to his former team, that the player is free to contract with any other team in the NBA. We went through, that for a long time last night, what compensation --

Q I don't want you to repeat that.

A That is clear. It should be clear, at least on the record, as far as what the Lakers' position is. The other question, as I said, the Lakers really don't have a position I am aware of. At least I don't have a position. I am not aware of a Laker position enunciated nor have I heard the quote you showed me from Si Gourdine, NBA position. I have heard alot of discussion by people, a situation where the player does not play his option year, but sits it out, is to be treated or should be treated differently than the situation in which the player actually played out the option year.

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A Yes, I have heard people say the player in the one case, the first player, the player plays out the option, owes nothing of any kind to his former

team and in a sense therefore, that team has a lesser claim to whatever it is they want to claim.

Whereas in the other case a team claims a deprivation of some expectation or right and lack of full performance by the player and therefore a greater claim, if you will, than in the case where the player has performed his option year.

Q Greater claim against him.

A Of right and equity.

Q Against the player or against a team with which that player signed?

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Q Have there been discussions in this area where the player sits out an option year, there may be some claim against the player?

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Q But that issue is unresolved to date?

A That's correct, as far as I know.

Q Who are the people that have said in their view, there ought to be a claim against the player in the sit-out option year situation?

A The only one I can identify would be the

CERTIFICATE OF SERVICE

I, Irene R. Kenlan, hereby declare under penalty of perjury:

1. That I am a citizen of the United States, over the age of 18 years and not a party to nor interested in the foregoing cause of action. My business address is Suite 420 Russ Building, 235 Montgomery Street, San Francisco, CA. 94104.

2. That I forwarded by United States mail, postage prepaid, a copy of MEMORANDUM OF POINTS AND AUTHORITIES ON BEHALF OF WILTON N. CHAMBERLAIN IN OPPOSITION TO THE MOTION BY THE NATIONAL BASKETBALL ASSOCIATION FOR A PRELIMINARY INJUNCTION; AFFIDAVIT OF JOHN H. BOONE and attached EXHIBITS, to the following :

Peter Gruenberger, Esq.
Weil, Gotshal & Manges
767 Fifth Avenue,
New York, New York 10022

Robert S. Carlson, Esq.
Spengler, Carlson, Gubar & Churchill
280 Park Avenue
New York, New York 10017

Frederick P. Furth, Esq.
Suite 1330
235 Montgomery Street
San Francisco, CA. 94104

Michael H. Goldberg, Esq.
132 West 43rd Street
New York, New York

George Felleman, Esq.
Paul, Weiss, Rifkin, Wharton & Garrison
345 Park Avenue
New York, New York10022

Dated: January 16, 1975

Irene R. Kenlan

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al.,	:	
Plaintiffs,	:	70 Civ. 1526 (RLC)
-against-	:	
NATIONAL BASKETBALL ASSOCIATION, et al.,	:	
Defendants.	:	
AMERICAN BASKETBALL ASSOCIATION, et al.,	:	
Cross-claimants,	:	
-against-	:	
NATIONAL BASKETBALL ASSOCIATION, et al.,	:	
Cross-defendants.	:	

ANSWERS TO CROSS-CLAIMANT AMERICAN BASKETBALL ASSOCIATION'S THIRD SET OF INTERROGATORIES BY CROSS-DEFENDANT TEXAS SPORTS INVESTMENTS, INC.

Cross-defendant Texas Sports Investments, Inc. hereby makes the following answers to Cross-claimant American Basketball Association's Third Set of Interrogatories. In accordance with the May 19, 1975 ruling of this Court, and for the reasons set forth in this cross-defendant's December 8, 1975 responses and objections to the ABA's third set of interrogatories, the information supplied is for the period January 1, 1970 to the present.

These answers are being given before complete discovery and factual investigation in this case has been completed. This cross-defendant therefore reserves its right to supplement its answers at a subsequent time.

indemnity agreements are also shown by such contracts. Therefore the information sought by subparts (a)-(c) can be ascertained from documents produced and the burden of ascertaining the information is substantially the same for cross-claimants as for this cross-defendant.

The following payments were made pursuant to the agreement(s) to indemnify entered into by this cross-defendant:

Player	Payment(s) Made	Date(s) of Payment(s)
None		

All documents relating to the indemnities have been produced.

INTERROGATORY NO. 12:

Identify for each year, each player on your team who achieved so-called "free-agent" status. For purposes of this interrogatory a "free-agent" is defined as a player who is no longer under contract because: (1) he finished playing through the option period of his contract; (2) his contract contained no option and he finished playing through the term of his contract; or (3) the option in his contract was not exercised.

Answer to 12:

See this cross-defendant's supplemental answer to Interrogatory 24 of Plaintiffs' First Set of Interrogatories which identifies players who achieved "free-agent" status by playing through the option period of the contract.

The following players, from 1970 through 1975, achieved "free-agent" status because the contract contained no option and the player played through the term of his contract, or because the option in the contract was not exer-

cised:

1970:

1971:

1972:

1973:

1974:

1975: Zaid Abdul Aziz, Cliff Meely

INTERROGATORY NO. 13:

State whether you ever owned, in whole or in part, or operated, (i) a professional hockey team or (ii) a facility in which professional basketball or hockey is or has been played, and if so:

(a) Identify the professional hockey team or facility involved;

(b) Set forth the ownership interest, if any, you had in such team or facility;

(c) State when you had such an ownership or operating interest; and

(d) Identify the professional basketball or hockey teams that played in that facility.

Answer to 13:

See this cross-defendant's answer to Interrogatory 41 of the ABA's second set of interrogatories.

INTERROGATORY NO. 14:

Identify (by caption title, court or other body before whom the matter was or is pending, index number, citation to all decisions officially or otherwise reported, and name and last known address of the attorneys who represented you) all lawsuits, arbitrations, or other adversary proceedings in which:

(a) You were a party and any of the following were adverse parties to you: the NBA, NBA member teams, the ABA, ABA member teams other than yourself, owners of former or present ABA teams, potential buyers of an ABA team, NBA players, ABA players, agents of NBA or ABA players, colleges or universities, the National Collegiate Athletic Association, local television or radio stations, national radio or television networks, or owners or operators of facilities; and

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al., Plaintiffs, -against- NATIONAL BASKETBALL ASSOCIATION, et al., Defendants.	70 Civ. 1526 (RLC) AFFIDAVIT OF SEYMOUR S. GOLDBERG

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

SEYMOUR S. GOLDBERG, being first duly sworn, deposes and says:

I am an attorney at law licensed to practice in the State of California and in the Federal court in the Northern and Southern districts of California.

I have for approximately 12 years represented WILTON N. CHAMBERLAIN, who is the plaintiff in an action entitled "WILTON N. CHAMBERLAIN vs. NATIONAL BASKETBALL ASSOCIATION, et al.," in the United States District Court, Central District of California, No. CV 75 4258.

I have represented Mr. Chamberlain in all of his basketball negotiations for approximately 7 years. Mr. Chamberlain had in prior years fulfilled a player's contract with the Los Angeles Lakers basketball team and, as a result of an injunctive action filed by the Los Angeles Lakers, was compelled to "sit out" one additional year. Up until the latter part of September, 1975, it was our belief that by "sitting out" the option year of his Lakers' contract, Mr. Chamberlain was therefore a free agent.

In late September, 1975, through newspaper stories in the New York papers, the Los Angeles papers and by inquiry from reporters, it

came to my attention for the first time that the Los Angeles Lakers were now claiming that Mr. Chamberlain owed the Lakers a year of playing time, and, further, that no team in the NBA could negotiate with Mr. Chamberlain till they had purchased the Los Angeles Lakers' "rights" to Mr. Chamberlain. Upon hearing of said claim, I was instructed by my client to call Mr. Jack Kent Cooke, President, California Sports Incorporated, who owned the Lakers, and informed Mr. Cooke that since the Lakers claimed they owned the "rights" for Mr. Chamberlain to play for one more year, that Mr. Chamberlain would report for practice and join the team. This call was made on September 29, 1975. Mr. Cooke instructed me not to have Mr. Chamberlain report until his counsel, Mr. Alan Rothenberg, got back to me.

After talking with Mr. Cooke, I called the National Basketball Association league office and spoke to Mr. Simon Gourdine. I told Mr. Gourdine of my call to Mr. Cooke and wanted to confirm with the league the fact that if Mr. Chamberlain was allowed to report to the Lakers, the league would see that he received compensation equal to his last playing year. Mr. Gourdine informed me that this situation had never occurred before, and that he would have to seek counsel and get back to me. The next day he did get back to me and informed that he had sought counsel and that "nobody knew" whether Mr. Chamberlain would get paid or not and if he did get paid what the amount would be.

Mr. Rothenberg, counsel for California Sports Incorporated, called me a day or two later and instructed me not to allow Mr. Chamberlain to report to the Lakers and stated that if either Mr. Chamberlain or I reported to the Lakers, he assured us that we would be "embarrassed." I confirmed this conversation to Mr. Rothenberg by letter dated October 3, 1975, a copy of which is attached hereto as Exhibit "A." Mr. Rothenberg responded on October 6, 1975, a copy of which is attached hereto as Exhibit "B." My response is attached hereto as Exhibit "C," dated October 9, 1975. No other communication was had with the Lakers organization. The office of the NBA Commissioner, on October 2, 1975, issued a press release, a copy of which is attached hereto as Exhibit "D."

On October 14, 1975, I received a telegram from Mr. O'Brien, Commissioner of the NBA, stating specifically that Mr. Chamberlain was "a free agent" and that Mr. Chamberlain was free to sign with any team in the NBA. The contents of the telegram were made public to the press by the NBA and all believed that Mr. Chamberlain was truly a free agent.

The Commissioner, however, in addition to the public telegram, added a caveat to each team in the NBA stating in essence that any team signing Mr. Chamberlain would still have to compensate the Lakers for the Lakers' "rights." Therefore, any team in the NBA would have to either enter into a contract with Mr. Cooke, or take the risk of the Commissioner setting the amount of compensation due to the Lakers in the event any team signed Mr. Chamberlain.

So, in essence, nothing was changed by the October 14, 1975, telegram.

Mr. Chamberlain would have been delighted to entertain an offer of employment for the year 1975-76 and future years. None was made by any team.

The position of the NBA concerning the Lakers' rights were unknown to me or to Mr. Chamberlain prior to September, 1975, and all damages claimed in the action entitled "Wilton N. Chamberlain vs. National Basketball Association, et al.," United States District Court, Central District of California, No. CV 75 4258, commenced during the 1975-76 playing year and could not have been anticipated in the action Oscar Robertson, et al., against National Basketball Association, et al.

SEYMOUR S. GOLDBERG

Subscribed and sworn to
before me on January 19, 1976.

Lila Soler
Notary Public in and for the State
of California

OFFICIAL SEAL
LILA SOLER
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
LOS ANGELES COUNTY
My Commission Expires May 1, 1976

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October 3, 1975

Alan I. Rothenberg, Esq.
Manatt, Phelps & Rothenberg
1888 Century Park East - 21st Floor
Los Angeles, California 90067

Dear Mr. Rothenberg:

When last we spoke, you instructed me not to have Wilt appear at practice with the Lakers, suggesting that if either Wilt or I did so, we would be "embarrassed."

Since our conversation, the Commissioner of the NBA has apparently made a statement to the effect that if we are willing to play, you must either accept Wilt or release him from any further obligation.

Since the only contract which contains an option was our 1972-73 contract, I, of course, assume that you will be willing to abide by that contract for the option year.

If you still do not wish us to appear at practice, please forward to us our outright release. If you wish us to play out the option, please tell us the terms and conditions of the playing season in writing, and we will, upon concurring, promptly report to the squad.

Since Mr. Chamberlain is presently unable to consider employment by any other NBA team in accordance with the league rules, your immediate decision is urgently requested.

Yours very truly,

SEYMOUR S. GOLDBERG

SSG/pm

cc: Mr. Lawrence O'Brien
Commissioner, National Basketball Assn.

Cert. Return Recpt Req.

EXHIBIT A

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MANATT, PHELPS & ROTHENBERG
ATTORNEYS AT LAW
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MARC EPSTEIN
RICHARD LEE AUGUST
SANFORD ALAN ROSEN

October 6, 1975

Seymour S. Goldberg, Esq.
16633 Ventura Blvd.
Encino, California 91436

Re: Wilt Chamberlain

Dear Sy:

When we heard from the Commissioner of the NBA late last week, we immediately asked for clarification of the NBA's position so that the respective rights of the Los Angeles Lakers and Wilt Chamberlain would be better understood by us. After we have received such clarification, we may be in a better position to discuss the matter with you further.

Until that time, there would be no useful purpose in engaging in detailed argumentation as to the accuracy of the factual assertions or the legal conclusions set forth in your letter dated October 3, 1975. Suffice it to say that we do not agree with all of those assertions and conclusions.

Incidentally, for the record, I did not say that you or Wilt "would be embarrassed"; I did make the suggestion that Wilt should not appear at practice with the Lakers "only to avoid any possibility of embarrassment", and you agreed.

Sincerely,

A. I. Rothenberg

Alan I. Rothenberg
of Manatt, Phelps & Rothenberg

AIR:bar

cc: Mr. Lawrence O'Brien

EXHIBIT B

727

October 9, 1975

Alan I. Rothenberg, Esq.
Manatt, Phelps & Rothenberg
1888 Century Park East - 21st Floor
Los Angeles, California 90067

Re: Wilt Chamberlain

Dear Alan:

Thank you for your letter of October 6, 1975. I do agree with you that the physical presence of Wilt is a useless act, since you have made it clear that you do not wish to have him report.

We, of course, stand ready, willing and able to report to the Lakers to fulfill the obligation you claim under the terms and conditions of the option year contract previously submitted.

In the meantime, your claim of a playing option year has prevented any other interested team in the NBA from negotiating for Wilt's services.

Since the season has already begun in essence, Wilt's usefulness and desirability to any other franchise has undoubtedly been diminished or extinguished by the Lakers' claim that they own rights to Wilt's services.

We, therefore, put you on notice that by your acts of refusing to play Wilt when his services are being offered and concurrently refusing to allow others to utilize his services, you have clearly violated Wilt's rights; and we intend to pursue every remedy available to us through the courts, since the National Basketball Association seems unable to compel you to make a decision one way or the other.

Respectfully,

SEYMOUR S. GOLDBERG

SSG/pm

cc: Mr. Lawrence O'Brien

EXHIBIT C

728

October 2, 1975

Statement by NBA Commissioner Lawrence F. O'Brien

By failing to perform for the full term of his contract, Wilt Chamberlain breached his contract with the Los Angeles Lakers. His obligation is to play for the Lakers for another full season.

Assuming that he promptly reports to the Lakers to perform that obligation during the coming season and the Lakers elect to utilize his services, I will expect the Lakers to promptly perform their contractual obligations.

If any controversy were to arise between the Lakers and Chamberlain in connection with a contract, I would expect the two parties to negotiate and settle it expeditiously. If this should fail, I would then review the facts to determine the respective rights of the parties, including the rights, if any, the Lakers retain in Chamberlain's services.

# # # #

EXHIBIT D

729

AFFIDAVIT OF PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within above entitled action; my business address is:

16633 Ventura Boulevard, Suite 1400, Encino, California 91436.

On January 19, 1976, I served the within AFFIDAVIT OF SEYMOUR S. GOLDBERG on the interested parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Encino, California, addressed as follows:

Michael A. Cardozo, Esq.
Proskauer, Rose, Goetz & Mendelsohn
300 Park Avenue
New York, New York 10022

Peter Gruenberger, Esq.
Weil, Gotshal & Manges
767 Fifth Avenue
New York, New York 10022

Robert F. Carlson, Esq.
Spengler, Carlson, Gubar and Churchill
280 Park Avenue
New York, New York 10017

Frederick Furth, Esq.
235 Montgomery Street, Suite 1330
San Francisco, California 94104

Michael H. Goldberg, Esq.
142 West 43rd Street
New York, New York

George Felleman, Esq.
Paul, Weiss, Rifkin, Wharton and Garrison
345 Park Avenue
New York, New York 10022

I certify, under penalty of perjury, that the foregoing is true and correct.

Executed on January 19, 1976 at Encino, California.

Lila Soler

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On January 19, 1976 before me, the undersigned, a Notary Public in and for said State, personally appeared LILA SOLER, known to me to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same.

WITNESS my hand and official seal.

Notary Public in and for said County and State

OFFICIAL SEAL
ELIZABETH T. BAKER
NOTARY PUBLIC - CALIFORNIA
LOS ANGELES COUNTY
My Commission Expires Sept. 2, 1978

OFFICIAL SEAL
ELIZABETH T. BAKER
NOTARY PUBLIC - CALIFORNIA
LOS ANGELES COUNTY
My Commission Expires Sept. 2, 1978

730

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SPENCER HADDIXON, et al.,

Plaintiffs,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants.

70 Civ. 1526 (KLC)

AMERICAN BASKETBALL ASSOCIATION, et al.,

Cross-claimants,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Cross-defendants.

MEMORANDUM OF NBA DEFENDANTS IN SUPPORT OF THEIR MOTION FOR A PRELIMINARY INJUNCTION

BEST COPY AVAILABLE

PROSKAUER ROSE GOETZ & MENDELSOHN
ATTORNEYS
300 PARK AVENUE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al.,	:	
Plaintiffs,	:	70 Civ. 1526 (RLC)
- against -	:	
NATIONAL BASKETBALL ASSOCIATION, et al.,	:	
Defendants.	:	
AMERICAN BASKETBALL ASSOCIATION, et al.,	:	
Cross-claimants,	:	
- against -	:	
NATIONAL BASKETBALL ASSOCIATION, et al.,	:	
Cross-defendants.	:	

MEMORANDUM OF NBA DEFENDANTS IN SUPPORT OF THEIR MOTION FOR A PRELIMINARY INJUNCTION

This memorandum is submitted by the NBA defendants other than Madison Square Garden Corp. and Madison Square Garden Center, Inc. in support of said entities' motion to preliminarily enjoin class plaintiff Wilton N. Chamberlain, who in March 1970 specifically authorized the Robertson action to be brought as a class action on

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al.,	:	
Plaintiffs,	:	70 Civ. 1526 (RLC)
- against -	:	
NATIONAL BASKETBALL ASSOCIATION, et al.,	:	
Defendants.	:	
AMERICAN BASKETBALL ASSOCIATION, et al.,	:	
Cross-claimants,	:	
- against -	:	
NATIONAL BASKETBALL ASSOCIATION, et al.,	:	
Cross-defendants.	:	

MEMORANDUM OF NBA DEFENDANTS IN SUPPORT OF THEIR MOTION FOR A PRELIMINARY INJUNCTION

This memorandum is submitted by the NBA defendants other than Madison Square Garden Corp. and Madison Square Garden Center, Inc. in support of said entities' motion to preliminarily enjoin class plaintiff Wilton N. Chamberlain, who in March 1970 specifically authorized the Robertson action to be brought as a class action on

his behalf*, from prosecuting an action commenced by him on December 22, 1975, in the United States District Court for the Central District of California (hereinafter "the Chamberlain action").**

The facts necessary to the granting of the preliminary injunction sought herein are set forth in the moving and reply affidavits. Suffice it to say that class plaintiff Chamberlain has filed an action against the NBA defendants in California complaining about the operation of the option clause in his NBA contract and the NBA compensation rule, issues that are central to the Robertson class action.*** Under such circumstances, it is well settled that this Court has the power to enjoin prosecution of the Chamberlain action.

Determinative of this motion will be resolution of the issue whether a class plaintiff, in a class action he authorized to be commenced on his behalf in one district court, may undermine the jurisdiction of that court and

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* A copy of Chamberlain's authorization to commence the Robertson class action on his behalf is annexed as Exhibit C to the moving affidavit.

** A copy of the complaint in the Chamberlain action is annexed as Exhibit A to the moving affidavit.

*** A copy of the second amended and supplemental complaint in the Robertson action is annexed as Exhibit B to the moving affidavit.

disrupt the orderly administration of justice by commencing a second action which (a) seeks damages with respect to activities at issue before the first court; (b) seeks a determination of issues which are the same as, or interwoven with, the issues to be determined by the first court; and (c) seeks relief which may conflict with relief sought in the first action or would render meaningless adjudication of the issues before the first court.

This memorandum will demonstrate that by the commencement of the California action Chamberlain has attempted to do all of the above, and that the applicable authorities mandate that his assault on this Court's jurisdiction be enjoined. In Point I, infra, we demonstrate that the issues involved in the Chamberlain case find their parallel in the Robertson case. In Points II and III, infra, we show that the power of this Court to enjoin duplicative litigation such as that involved here is unquestioned, and has frequently been exercised in a class action such as this. In Point IV, infra, we dispose of the other arguments Mr. Chamberlain advances as to why the injunction should not issue.

POINT I

THE MATTERS COMPLAINED OF IN THE CHAMBERLAIN ACTION ARE ALL PART OF THE ROBERTSON ACTION

The essential identity of the Chamberlain complaint with the Robertson complaint is detailed in the moving affidavit (¶¶3-10). All of the defendants in the Chamberlain action -- the NBA and its teams -- are party defendants in Robertson. Central to Chamberlain's California action is his complaint about the operation of the option clause in his NBA contract, and the possibility that any NBA team that wanted to enter into a contract with him would have to pay compensation to Los Angeles. Both the operation of the option clause and the so-called reserve compensation plan are unquestionably part of the Robertson action, as recognized by this Court in its February 14, 1975 opinion (389 F. Supp. 867), in its November 12, 1975 endorsement granting plaintiffs' motion to amend the complaint (Exhibit 2 to the reply affidavit), and during the argument of that latter motion on November 3, 1975 (Exhibit 1 to the reply affidavit).

The basic charge in Robertson is that the NBA's reserve system -- including the option clause, the tampering rules and the reserve compensation plan, as well as the draft, the right to trade a player, and the alleged sharing of salary

information -- constitutes an unlawful monopolistic restrain Indeed, in his Robertson authorization form Mr. Chamberla directed that this action be commenced "in order to bring about an end to any agreement among the clubs or other entities to eliminate competition among them in the acquisition of talent." (Moving affidavit, Exhibit C).

A similar theme pervades the Chamberlain complaint. This is best seen by comparing paragraph 29 of the Robertson complaint (Exhibit B to the moving affidavit) to paragraph 23 of the Chamberlain complaint (Exhibit A to the moving affidavit). The Robertson paragraph alleges:

> "[O]nce a player is drafted by an NBA team, he must start to play and continue to play for only one club in the NBA and none other during his playing caree[illegible] except for a club to which he may be involuntarily 'traded' or 'sold'. No other club will ever negotiate with him. Moreover, even years after his retirement as an active player, he may not seek to return to active status as a player or as a player-coach, unless the club which holds such lifetime rights to him as a player releases him unconditionally or extracts a forced 'trade' or 'sale' with the club which desires that player's services."

In virtually identical language, with respect to the lack of freedom after an NBA player signs his first contract, the Chamberlain complaint alleges:

> "[O]nce a player has signed a Standard Player Contract with a member team to whom he is assigned and then has fully performed his contract for the term of his employment, he is not free to negotiate with any other defendant member team, and no other defendant member team is free to negotiate with him, on freely and competitively negotiated terms.... [A player] cannot become employed by any defendant member team except within the terms of the rules set forth by the Commissioner...to negotiate with and pay compensation to the defendant member team with the so-called 'rights'."

The distinction which Chamberlain's attorneys would attempt to draw between "playing out" the option year and "sitting out" the option year is highly artificial and without significance. That issue is surely in the Robertson case. It involves the interpretation and operation of the option clause in a class plaintiff's NBA contract and involves a form of what this Court has called the "reserve clause compensation plan". In fact, a reading of the Chamberlain complaint and particularly the Goldberg affidavit shows that Mr. Chamberlain is complaining, to use Mr. Goldberg's words, that "any team in the NBA would have to either enter into a contract with [Los Angeles] or take the risk of the Commissioner setting the amount of compensation due to the [Los Angeles Lakers] in the event any team signed Mr. Chamberlain". This is a complaint about the reserve compensation plan that is already in the Robertson action.

Just as this Court observed at the hearing on November 3, 1975, in expressing its feeling that it was not necessary to amend the plaintiffs' class action complaint to add specific reference to the so-called reserve compensation plan, because "[i]t is part of the reserve clause as far as I am concerned"*, so too the Chamberlain option clause and compensation complaint is "part of the reserve clause" and its interpretation and operation.**

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* Exhibit 1 to the reply affidavit, p. 24.

** The fact that Chamberlain is not specifically mentioned in the class action complaint is not of significance, for, as this Court stated at the hearing on November 3, "[y]ou don't have to, just because you learned something, have to go and amend your complaint." Id. at 36. See also, the November 12 endorsement (Exhibit 2 to the reply affidavit): "[e]videntiary proof as to both matters is clearly admissible at trial even without amendment to the complaint . . . ." (Emphasis added).

POINT II

THE DECIDED AUTHORITIES SUPPORT THE GRANT OF AN INJUNCTION HERE

"The power to issue an injunction when necessary to prevent the defeat or impairment of [a court's] jurisdiction is . . . inherent in a . . . duly established court of equity." Continental Illinois National Bank & Trust Co. v. Chicago, Rock Island & Pacific Ry. Co., 294 U.S. 648, 675 (1935). See also, Steelman v. All Continent Corp., 301 U.S. 278, 289 (1937); Kinnear-Weed Corp. v. Humble Oil & Refining Co., 441 F.2d 631 (5th Cir.), cert. denied, 404 U.S. 941 (1971); Clinton v. United States, 297 F.2d 899 (9th Cir. 1961).

In deciding whether to enjoin the prosecution of a subsequently commenced action, courts have frequently applied the "transaction or occurrence" test found in the compulsory counterclaim rule of Rule 13(a) of the Federal Rules of Civil Procedure, a test which is found to be satisfied if the claims are "logically related" to one another. Thus, in National Equipment Rental, Ltd. v. Fowler, 287 F.2d 43 (2d Cir. 1961), Judge Waterman, after finding that the causes of action in Action No. 2 could have been pleaded as compulsory counterclaims in Action No. 1, wrote:

> "The bulk of authority supports the position that when a case is brought in one federal district court, and the case so brought embraces essentially

> the same transactions as those in a case pending in another federal district court, the latter court may enjoin the suitor in the more recently commenced case from taking any further action in the prosecution of that case." Id. at 45. (Emphasis added.)

See also, Meeropol v. Nizer, 505 F.2d 232 (2d Cir. 1974):

> "Where an action is brought in one federal district court and a later action embracing the same issue is brought in another federal court, the first court has jurisdiction to enjoin the prosecution of the second action . . . This rule is applicable even where the parties in the two actions are not identical." Id. at 235.

The question of whether the two actions meet "the same transaction" test of National Equipment Rental, Ltd. v. Fowler, supra, is answered affirmatively when, as here, the claims have a "logical relationship" with one another; "absolute factual identity" is not required.* Whether such a "logical relationship" exists is decided on a practical level based upon the possibility of duplication of effort and considerations of convenience. See, Great Lakes Rubber Corp. v. Herbert Cooper Co., 286 F.2d 631 (3d Cir. 1961);

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* See, e.g., Moore v. New York Cotton Exchange, 270 U.S. 593 (1926); United States v. Heyward-Robinson Co., 430 F.2d 1077 (2d Cir. 1970), cert. denied, 400 U.S. 1021 (1971); United Artists Corp. v. Masterpiece Productions, Inc., 221 F.2d 213 (2d Cir. 1955); Lesnik v. Public Industrials Corp., 144 F.2d 968 (2d Cir. 1944); E. J. Korvette Co. v. Parker Pen Co., 17 F.R.D. 267 (S.D.N.Y. 1955).

United Fruit Co. v. Standard Fruit and Steamship Co., 282 F. Supp. 338 (D. Mass. 1968).

The authorities supporting the issuance of the preliminary injunction sought herein are legion; injunctions against subsequent, duplicating actions have been issued in cases too numerous to cite comprehensively.* As demonstrated in Point I, supra, the matters complained of in the Chamberlain action are clearly "logically related" to the Robertson action and hence prosecution of the Chamberlain action should be enjoined.

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* These cases include Coakley & Booth, Inc. v. Baltimore Contractors, Inc., 367 F.2d 151 (2d Cir. 1966); Telephonics Corp. & Fabrionics Corp. v. Lindly & Co., 291 F.2d 445 (2d Cir. 1961); Ronson Art Metal Works v. Brown & Bigelow, 105 F. Supp. 169, 173-174 (S.D.N.Y.), aff'd on opinion below, 199 F.2d 760 (2d Cir. 1952); Remington Products Corp. v. American Aerovap, Inc., 192 F.2d 872 (2d Cir. 1951); Cresta Blanca Wine Co. v. Eastern Wine Corp., 143 F.2d 1012 (2d Cir. 1944); Martin v. Graybar Elec. Co., 266 F.2d 202 (7th Cir. 1959); Urbain v. Knapp Bros. Mfg. Co., 217 F.2d 810 (6th Cir. 1954); MacLaren v. B-I-W Group, Inc., 329 F. Supp. 545 (S.D.N.Y. 1971); Montclair Electronics, Inc. v. Electra/Midland Corp., 326 F. Supp. 839, 843 (S.D.N.Y. 1971); and Riso Kagaku Corp. v. A.B. Dick Co., 300 F. Supp. 1007, 1009, 1011 (S.D.N.Y. 1969).

POINT III

THIS COURT'S CLASS ACTION RULING MAKES THE REQUESTED INJUNCTIVE RELIEF PARTICULARLY APPROPRIATE

Further support for the requested injunction can be found in this Court's class action ruling. On March 15, 1970, Chamberlain specifically authorized that the Robertson class action be brought on his behalf. On February 14, 1974, over the vigorous opposition of the NBA defendants, this Court certified this case as a class action under Rule 23(b)(1), F.R.Civ.P. because, inter alia, of the possibility that "separate actions" might be filed which "could establish incompatible standards of conduct for the NBA." (389 F. Supp. 876, 901). The Court observed that "if this action were allowed to continue only for the benefit of the named plaintiffs, it is conceivable that other members of the proposed class would file similar complaints in other courts. The court might grant injunctive relief, another court might refuse and a third may give relief which differs in material respects from the first." (389 F. Supp. at 901).

Chamberlain, by filing his California action, has done just that which the Court predicted. The preliminary injunction sought herein flows from the very nature of Rule 23(b)(1) class action certification. As long as the Robertson action continues to be certified as a class action,

the NBA defendants should be afforded that protection against subsequent, duplicating actions brought by class plaintiffs which occasioned this Court to grant Rule 23(b)(1) class certification.

In an analogous situation, Judge (now Justice) Stevens ruled that a second, duplicating action would not be permitted to go forward in view of the prosecution of a prior class action in another federal court. American Civil Liberties Union v. Baird, 463 F.2d 499 (7th Cir. 1972), cert. denied, 409 U.S. 1116 (1973).

To the same effect is Kronenberg v. Hotel Governor Clinton, Inc., 281 F. Supp. 622 (S.D.N.Y. 1967), an opinion relied upon by Chamberlain (p. 10-11). In that case, Judge Palmieri had "enjoined the prosecution of any claims for relief" by persons who did not opt-out of the Rule 23(b)(3) class action therein. Judge Bryan adhered to this ruling and stated that a class plaintiff who had not opted-out "falls within the terms of the injunctive provisions of Judge Palmieri's order", and accordingly "prosecution of that [second] suit has been stayed." 281 F. Supp. at 624.

Similarly, since class plaintiff Chamberlain has not opted-out -- indeed he could not do so -- and since the authorities are so clearly in favor of protecting the jurisdiction of this Court and avoiding duplicative litigation,

prosecution of Chamberlain's California action should be enjoined. Accord, Fields v. Wolfson, 41 F.R.D. 329 (S.D.N.Y. 1967)(Mansfield, J.). See also, Weeks v. Bareco Oil Co., 125 F.2d 84 (7th Cir. 1941) (Chamberlain memorandum at 10) ("[t]he avoidance of a multiplicity of suits is one of the purposes of a class action" and "[t]here . . . have been, cases where the injunction against suit by other members of the class in other jurisdictions, is clearly proper." 125 F.2d at 94, 95).

The Robertson case, specifically authorized to be commenced on his behalf by Chamberlain, has been certified as a class action, and a Rule 23(b)(1) class action at that. Chamberlain has filed a subsequent, duplicative action in another federal court. No more appropriate case for the issuance of such an injunction could present itself than the instant Chamberlain case.

POINT IV

CHAMBERLAIN'S OTHER ARGUMENTS ARE WITHOUT MERIT

Contrary to the argument set forth in Point II of the Chamberlain memorandum, the issuance of the preliminary injunction sought herein would not constitute an abuse of this Court's equitable power. As set forth at length in Points II and III above, there is abundant authority, none of which has been cited or questioned by Chamberlain, for this Court to enjoin the Chamberlain action. The injunctive and monetary relief sought in that action will be subsumed in the relief, if any, granted by the final judgment in Robertson. (Reply affidavit, ¶6).

Finally, Point IV of the Chamberlain memorandum, asserting that this Court lacks personal jurisdiction over Mr. Chamberlain, is also without merit. Ignoring this Court's July 8, 1975 opinion (67 F.R.D. 691), that permitted discovery of class members under Rules 33 and 34 of the Federal Rules of Civil Procedure, Mr. Chamberlain argues that he is not a "party" to this action. Such an argument was rejected by this Court on July 8 when it held that the NBA defendants' requested class discovery was not precluded by the alleged non-party status of non-named class plaintiffs like Chamberlain.

In fact, at the November 3 hearing the Court made clear that "the members of the class . . . are parties to the litigation." (Exhibit 1 to the reply affidavit, p. 4) (Emphasis added). Mr. Chamberlain's transparent attempt to reargue this Court's July 8 opinion to justify his non-party status here is without merit.

Wholly independent of this Court's July opinion, Chamberlain's argument in Point IV is contrary to well settled authority. One has to look no further than the cases cited by Chamberlain to see that his argument contained in Point IV is without merit. Weeks v. Bareco Oil Co., 125 F.2d 84 (7th Cir. 1941)(Chamberlain memorandum at p. 10) states that a suit brought by a non-named class plaintiff like Chamberlain can be enjoined by the federal court which has jurisdiction over the class action:

> "There may be, and have been, cases where the injunction against suit by other members of the class in other jurisdictions, is clearly proper." 125 F.2d at 95.

See also, Kronenberg v. Hotel Governor Clinton, Inc., 281 F. Supp. 622 (S.D.N.Y. 1967)(Chamberlain memorandum at p. 10) (supra, at 12).

CONCLUSION

For the foregoing reasons, as well as those stated in the moving and reply affidavits, the motion of the NBA defendants for a preliminary injunction should be granted.

Respectfully submitted,

PROSKAUER ROSE GOETZ & MENDELSOHN

By /s/
Attorneys for all NBA Defendants except Madison Square Garden Corporation and Madison Square Garden Center, Inc.

Of Counsel:

Michael A. Cardozo
Richard L. Wasserman

January 22, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al., Plaintiffs, -against- NATIONAL BASKETBALL ASSOCIATION, et al., Defendants.	:	70 Civ. 1526 (RLC)
AMERICAN BASKETBALL ASSOCIATION, et al., Cross-claimants, -against- NATIONAL BASKETBALL ASSOCIATION, et al., Cross-defendants.	:	

ANSWERS TO CROSS-CLAIMANT AMERICAN BASKETBALL ASSOCIATION'S THIRD SET OF INTERROGATORIES BY CROSS-DEFENDANT MILWAUKEE PROFESSIONAL SPORTS & SERVICES, INC.

Cross-defendant Milwaukee Professional Sports & Services, Inc. hereby makes the following answers to Cross-claimant American Basketball Association's Third Set of Interrogatories. In accordance with the May 19, 1975 ruling of this Court, and for the reasons set forth in this cross-defendant's December 8, 1975 responses and objections to the ABA's third set of interrogatories, the information supplied is for the period January 1, 1970 to the present.

These answers are being given before complete discovery and factual investigation in this case has been completed. This cross-defendant therefore reserves its right to supplement its answers at a subsequent time.

indemnity agreements are also shown by such contracts. Therefore the information sought by subparts (a)-(c) can be ascertained from documents produced and the burden of ascertaining the information is substantially the same for cross-claimants as for this cross-defendant.

The following payments were made pursuant to the agreement(s) to indemnify entered into by this cross-defendant:

Player	Payment(s) Made	Date(s) of Payment(s)
NONE		

All documents relating to the indemnities have been produced.

INTERROGATORY NO. 12:

Identify for each year, each player on your team who achieved so-called "free-agent" status. For purposes of this interrogatory a "free-agent" is defined as a player who is no longer under contract because: (1) he finished playing through the option period of his contract; (2) his contract contained no option and he finished playing through the term of his contract; or (3) the option in his contract was not exercised.

Answer to 12:

See this cross-defendant's supplemental answer to Interrogatory 24 of Plaintiffs' First Set of Interrogatories which identifies players who achieved "free-agent" status by playing through the option period of the contract.

The following players, from 1970 through 1975, achieved "free-agent" status because the contract contained no option and the player played through the term of his contract, or because the option in the contract was not exer-

cised:

1970:

1971:

1972:

1973:

1974: Oscar Robertson

1975:

INTERROGATORY NO. 13:

State whether you ever owned, in whole or in part, or operated, (i) a professional hockey team or (ii) a facility in which professional basketball or hockey is or has been played, and if so:

(a) Identify the professional hockey team or facility involved;

(b) Set forth the ownership interest, if any, you had in such team or facility;

(c) State when you had such an ownership or operating interest; and

(d) Identify the professional basketball or hockey teams that played in that facility.

Answer to 13:

See this cross-defendant's answer to Interrogatory 41 of the ABA's second set of interrogatories.

INTERROGATORY NO. 14:

Identify (by caption title, court or other body before whom the matter was or is pending, index number, citation to all decisions officially or otherwise reported, and name and last known address of the attorneys who represented you) all lawsuits, arbitrations, or other adversary proceedings in which:

(a) You were a party and any of the following were adverse parties to you: the NBA, NBA member teams, the ABA, ABA member teams other than yourself, owners of former or present ABA teams, potential buyers of an ABA team, NBA players, ABA players, agents of NBA or ABA players, colleges or universities, the National Collegiate Athletic Association, local television or radio stations, national radio or television networks, or owners or operators of facilities; and

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al.,

Plaintiffs,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants.

70 Civ. 1526 (RLC)

REPLY AFFIDAVIT

AMERICAN BASKETBALL ASSOCIATION, et al.,

Cross-claimants,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Cross-defendants.

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

MICHAEL A. CARDOZO, being duly sworn, deposes and says:

1. I am a member of Proskauer Rose Goetz & Mendelsohn, attorneys in this action for the NBA defendants other than Madison Square Garden Corporation and Madison Square Garden Center, Inc. I make this affidavit in further support of the NBA defendants' motion, pursuant to Rules 23 and 65 of the Federal Rules of Civil Procedure, to preliminarily enjoin class plaintiff Wilton N. Chamberlain from prosecuting the December 22, 1975 action he filed in the United States District Court for the Central District of California, and in reply to the affidavits filed by John M. Boone and Seymour S. Goldberg, Mr. Chamberlain's attorneys.

2. The virtual identity of issues in the Robertson and Chamberlain complaints is set out in my moving affidavit and the memorandum of law filed herewith. Suffice it to say here that, as the Goldberg affidavit makes clear, the basic controversy between Mr. Chamberlain and the NBA defendants concerns the rights and obligations of a player and team after the expiration of the stated term of the player's contract plus one year. Specifically, Mr. Chamberlain is complaining of the alleged obligation to compensate Los Angeles that an NBA team would have had if it had signed Mr. Chamberlain to a playing contract. Of course, the legality of the NBA's option clause, its duration, and the permissibility of the compensation policy followed by the NBA are all involved in the Robertson action.

3. Contrary to the impression that Mr. Boone would try to give this Court, discovery in the Robertson action has to date encompassed, and will undoubtedly continue to encompass, the matters complained of by Chamberlain in his California action. The vast discovery with respect to the operation of the option clause in the NBA is well known to the Court and need not be repeated here. Such discovery has included the operation and effect of the alleged reserve compensation plan, which was the subject of an amendment to the class action complaint permitted by this Court on November 12, 1975, even though the Court concluded prior to the amendment that "the reserve clause compensation plan is in the case."*

* Transcript of November 3, 1975 hearing, p. 34. Copies of relevant pages from the November 3, 1975 hearing transcript, and this Court's November 12, 1975 endorsement granting plaintiffs' motion to amend their complaint are annexed hereto as Exhibits 1 and 2.

4. In addition, documents have been produced by the NBA defendants relating to the matters complained of by Mr. Chamberlain, including those events occurring during the fall of 1975 that are referred to in the Boone and Goldberg affidavits. See, e.g., NBA documents numbered 01 56709 - 01 56744. Included among the foregoing documents are the four exhibits annexed to Mr. Goldberg's affidavit, together with NBA Commissioner O'Brien's October 14, 1975 telegram referred to on page 3 of Mr. Goldberg's affidavit, a copy of which is annexed hereto as Exhibit 3.

5. Also contrary to the impression that Mr. Boone would give in his affidavit, examination was permitted at the depositions of Los Angeles Laker representatives Jack Kent Cooke and Alan Rothenberg into the matters about which Chamberlain complains in his California action. Such an examination covers 68 pages of those transcripts and was only foreclosed when improper, hypothetical questions were addressed to those witnesses at their July depositions prior to the events complained of by Mr. Chamberlain. The fact that in October, plaintiffs in this action (but not the ABA cross-claimants whose examinations had not been closed) were not permitted to reopen the depositions of Messrs. Cooke and Rothenberg that they had voluntarily closed in July, has no bearing on whether or not an issue is or is not before this Court in the class action. Moreover, we anticipate that Michael Burke, President of NBA defendant Madison Square Garden Center, Inc. (owner of the New York Knickerbockers) and NBA Commissioner O'Brien, whose depositions are scheduled to be held next week, will be examined about the matters that Chamberlain complains of in his California

action. For Chamberlain's counsel to suggest that discovery in this class action has not and will not encompass those matters complained of by Chamberlain in his California action unjustifiedly distorts the record of discovery in this case.

6. The last paragraph of Mr. Goldberg's affidavit perhaps best illustrates the misconceptions of Chamberlain's attorneys as to the nature of the Robertson action and Chamberlain's obligations -- as well as his rights -- as a class plaintiff who specifically authorized the commencement of this class action on his behalf. Mr. Goldberg states:

> "The position of the NBA concerning the Lakers' rights were unknown to me or to Mr. Chamberlain prior to September, 1975, and all damages claimed in the action entitled 'Wilton N. Chamberlain vs. National Basketball Association, et al.', . . . commenced during the 1975-76 playing year and could not have been anticipated in the action Oscar Robertson, et al., against National Basketball Association, et al."

A. Assuming that the position of the NBA was unknown to Chamberlain or his counsel prior to September, 1975, so to the fact that the New York and Denver ABA teams would make applications to join the NBA was unknown until September, 1975. Notwithstanding the fact that such applications were unknown until September, 1975, this Court, as recently as two weeks ago, stated over my objection that "I think that's part of [the ABA cross-claimants'] case against [the NBA cross-defendants]."* The Court made clear

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* Transcript of January 8, 1976 hearing, p. 153. A copy of the relevant portion of that transcript is annexed hereto as Exhibit 4.

that the fact that events occurred in September, 1975, after the February 1, 1976 discovery cut-off date had been fixed, did not foreclose discovery on, or relief for, the September 1975 occurrences. Consequently, that the matter at issue in Chamberlain did not occur until September 1975 can be of no controlling significance.

B. The fact that the damages, if any, claimed in Chamberlain's California action commenced during the 1975-76 playing year is also of no consequence. The Robertson action, which seeks treble damages on behalf of Chamberlain, seeks such damages from "April 16, 1966, through the date of a final judgment in this action."* Since the trial in the Robertson action is scheduled to begin on or about June 1. 1976, after the end of the 1975-76 season, Chamberlain's damages, if any, for this season, contrary to the implication in Mr. Goldberg's affidavit, will be fully encompassed in the Robertson judgment.

7. To Chamberlain's irreparable injury argument, we first note that an affirmative showing of irreparable injury, which is so very obvious from the posture of the Robertson case, has not been held to be a necessary prerequisite to the granting of the injunction sought herein. Rather, such injunctive relief flows from the inherent power of a federal court to protect its jurisdiction, and particularly so in a Rule 23(b)(1) class action like the Robertson action.

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* Page 3 of the Notice of Pendency of Class Action, sent, upon information and belief, to Chamberlain, a copy of which is annexed as part of Exhibit D to the moving affidavit.

8. Moreover, rather than respond at length to the argument of Chamberlain's counsel that the NBA defendant have made no showing of irreparable injury sufficient to justify this Court's granting of a preliminary injunction against the prosecution of Chamberlain's California action, suffice it to say that at this late date, on the eve of the end of discovery in the Robertson action and at the beginnin of the extraordinarily brief period during which the NBA defendants must prepare this case for trial, it would be unduly burdensome to require the very same defendants at this same time to defend an essentially duplicative action in another forum and to engage in essentially duplicative discovery. Just as there was irreparable injury and compelling need sufficient to enjoin the action brought by Mr. Boone and Mr. Furth in 1974 on behalf of the ABA in California, so a fortiori, there is the requisite irreparable injury and compelling need for this Court to grant a preliminary injunction against the prosecution of Mr. Boone's 1975 California action brought on behalf of class plaintiff Wilton N. Chamberlain.

MICHAEL A. CARDOZO

Sworn to before me this
22nd day of January, 1976.

Notary Public

LAWRENCE [illegible]
NOTARY PUBLIC, State of New York
No. [illegible]
Qualified in Westchester County
Commission Expires March 30, 1977

Exhibit 1

the other sports players associations.

THE COURT: Let's deal with the members of the class. I think there is a separate issue as to the members of the class and the attorneys and the people in the other sports.

I think there are different issues involved.

MR. GRUENBERGER: They overlap.

THE COURT: There are different issues involved in my mind, Mr. Gruenberger, so let's take them first.

MR. GRUENBERGER: Under the Federal Rule 26 (c) and Local Rule 5 (a), it is clear that these rules contemplate imposing burdens on the party noticing such depositions to pay costs when under the fairness and circumstances in each case such costs ought to be imposed.

Issuance of protective orders in cases like this do not depend on whether the depositions are relevant or whether the depositions are needed. These protective order provisions assume and presume that all depositions are relevant and needed.

THE COURT: The reason I separated them out is because I think the problem you have is that as I understand what is wanted is that in so far as themembers of the class are concerned they are parties to the litigation and the other people are not. You are asking the NBA pay to

depose your clients.

MR. GRUENBERGER: No, your Honor. I have to refer your Honor to your own opinion of July 8, 1975, page 19. You were very careful in that opinion, your Honor, not to hold that these class members are plaintiffs or parties. You must recall that there were fourteen plaintiffs here. Each one of these fourteen plaintiffs came into New York and had his deposition taken at the cost of those plaintiffs. Each one of them has already done that.

This is the very first case a deposition could be held of a class member, the first one ever.

THE COURT: That's not true.

MR. GRUENBERGER: If you recall your own opinion, your Honor --

THE COURT: I don't want that argument, Mr. Gruenberger. The problem which I have with your papers is that what you have done in your papers is that you disagree with my opinion in the respect of allowing these people to take the depositions.

MR. GRUENBERGER: No, I do not. I don't oppose the taking of depositions at all. We have worked like mad to set up the schedule for the taking of these depositions, your Honor.

THE COURT: Your whole complaint was that they

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THE COURT: Mr. Stern, I think you all should understand I don't look at these matters, any personal remark or remarks made about any of the attorneys. They don't bother me unless it is something that is done that interferes with your conduct of your deposition, as happened with Mr. Cardozo and you in regard to the A.B.A. That gives me some pause. I don't think any of you, after you get outside of here, have to consider these personal remarks, either, so they don't mean anything at all to me.

MR. GRUENBERGER: In addition, there are no such personal remarks.

THE COURT: Let's go on to the motion to amend.

MR. GRUENBERGER: The motion to amend, your Honor: plaintiffs request changes in the present complaint in four very specific detailed areas. The first area is the pleading of two new restraints, but just adding them to the existing counts of the complaint. No new counts were added which were unknown to the plaintiff when the first complaint was submitted. They were recently uncovered in the course of discovery.

THE COURT: What are they? I have forgotten.

MR. GRUENBERGER: The two restraints to be added are:

One, the reserve compensation plan, which your

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Honor discussed at length in his February 14, 1975 opinion -- that is, the plan whereby someone who finally reaches "free agent status" after playing through all the option and reserve period still can't go to a new team unless the new team pays the old team compensation -- the Rozelle rule.

THE COURT: I don't see why you need to make an addition to that.

MR. GRUENBERGER: It is not in the complaint and the class knows about it because it was in the class notice.

THE COURT: It is discussed by me and is in the case.

MR. GRUENBERGER: That's why I don't see there objection to my amending the complaint.

THE COURT: You are certainly going to be allowed to present evidence on it. It is part of the reserve clause as far as I am concerned. I don't see why you need to amend your complaint for that. You are going to have --

MR. GRUENBERGER: Your Honor --

THE COURT: I don't see why you need to amend your complaint.

MR. GRUENBERGER: I was going to tell your Honor why.

THE COURT: I don't think you do, and I am going to preside over the trial.

MDP 764

Let's go to the next one.

MR. GRUENBERGER: The second one has not been ruled on by the Court because the existence of that restraint was not discovered until some time during this summer.

THE COURT: What is that?

MR. GRUENBERGER: That is a practice in NBA whereby all the teams receive exchange of information regarding the salaries of players on the other teams. There is a central location point in the NBA office where all this information is kept. Anybody who asks for it gets information not about the players they are negotiating with but for all the players for the purpose, as stated in Exhibits I, J. and K in my motion papers, to stabilize players' salaries.

THE COURT: Isn't that a means of --

MR. GRUENBERGER: Price fixing.

THE COURT: Of course, but isn't that a means of effectuating anti-trust measures? I don't see why you have to amend your complaint to get evidence of that in. I don't understand that. It seems to me that there is no necessity for you to amend your complaint for that. That is a method, it seems to me, pursuant to which they maintain these various practices in effect. That is what your basis is, and this is how they do it.

MR. GRUENBERGER: It is another practice we never knew anything about.

THE COURT: That is an exchange of information in order to keep the other practices firm and fixed.

MR. GRUENBERGER: The Supreme Court said that very practice to stabilize pricing through exchange of information --

THE COURT: I am agreeing with you. I don't understand why you need to amend the complaint to get in evidence like this in the case.

MR. GRUENBERGER: If I may answer that in three seconds: because if there is going to be an appeal in this case, whatever the result is, the record ought to be clear about what restraints we are talking about, so that they are all listed in one piece of paper rather than have two not listed and eight listed.

That is the only reason.

THE COURT: I don't care whether you amend the complaint or not insofar as those two practices are concerned. You are going to be able to prove them and put in evidentiary proof on them if I preside at the trial.

MR. GRUENBERGER: Since we have already typed up the new complaint with that in it, it is easy to leave it there, as easy as to take it out, because the facts are not in

in dispute.

Also not in dispute is the second area, the definition of the class notice. The old complaint had a definition that does not quite correspond with your Honor's class action ruling and with the agreement that Mr. Stern and I worked out about what the class definition ought to be.

We used that agreement, our class definition, which did correspond with your order in together sending out the class notice.

Now Mr. Stern doesn't want me to amend that to correspond to fact.

THE COURT: What else?

MR. GRUENBERGER: The third area, your Honor, has to do with the addition of two new defendants. Those two new defendants are, one, the New Orleans Jazz team, which came into the league last year, and, two, the new entity that owns the old Detroit team. Not a new team, but they just bought the team last year.

All we are doing there is to do what we did before, just add as defendants new teams that came in that adopted all the practices of the NBA --

THE COURT: I have your point.

MR. GRUENBERGER: The last is a category of

miscellaneous changes that just conform the facts to reality. That's the whole amendment.

THE COURT: I don't understand that last. Itcould beanything. I understand the others.

MR. GRUENBERGER: I laid out exactly -- and there was no objection from Mr. Stern - what those changes were.

THE COURT: I read all these papers about a week or so ago, because I was supposed to hear it then. I haven't read it over the week end.

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MR. GRUENBERGER: They are housekeeping changes. They conform the facts to reality. I would hate to try the case on the basis of non-true facts.

THE COURT: Let me hear from you, Mr. Stern. What do you object to?

MR. STERN: If I might have the luxury of a coupl of minutes, your Honor, I would like to put this in its proper perspective.

Without rehashing history too much, Mr. Gruenberger properly noted in his affidavit that he allegedly learned of some of these restraints, as he calls them, after discovery began in April of 1975, which is some very few months ago.

The first deposition of a party did not begin until June, and when Mr. Gruenberger said to me in August that he would like to amend the complaint I said to him, "It sounds like something I wouldn't have any objection to because we are in a relatively early stage in discovery."

Indeed, your Honor had ruled in July he was making some very early determinations to avoid that plethora of problems that confronted us.

When we appeared in court in September, we learned that what we thought was an early stage in discovery had become somewhat of a later stage, and that the case would be

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going to trial on basically eight months of discovery.

The Rozelle rule trial which only deals with this one aspect of Mr. Gruenberger's compensation plan as he alleges took fifty-five days' time simply to a judge without a jury, wholly apart from the NFL-AFL case.

The point is that I as counsel for the defendants am not prepared to consent to anything at this point that is going to make additional work. Mr. Gruenberger has again unloaded on us: "It is obvious that there is no additional work." Well, if I have two new clients, assuming I represent them, your Honor, it is going to be additional work.

Talk about work, there was a motion to amend the complaint. I put in a simple affidavit. I didn't put in a memo. And I got a reply memo. It's never ending, your Honor, and I am simply not prepared to go forward and agree to anything.

In addition, there are other things that are unresolved. I am not asking your Honor to resolve them now. But the fact is we are trying to put this case into some kind of condition.

Mr. Gruenberger quotes a very appropriate case in his reply memorandum which I read upon my return from California. He cites a Second Circuit case which says that

is free to exchange information such as that.

THE COURT: I am not passing judgment on it, but all I am saying is whatever it is labeled it seems to me that it is evidentiary proof that Mr. Gruenberger is going to be entitled to show in this case.

What he can make of it I have no idea, but if there is a jury trial he will present it and you will ask the jury to view it as one thing, and he will ask them to view it as another.

In any event, I think that he is clearly entitled to present that.

MR. STERN: I understand what your Honor is saying on that. I will reserve my rights to object at the time he attempts to put it in.

THE COURT: As to the definition of the class, do you have any objection?

MR. STERN: I can't argue with Mr. Gruenberger on that. If we define it one way, I can't argue to the jury there is another way to define it.

THE COURT: I think as far the new team, he is entitled to have them in the case if they are taking over from someone else, and I don't see any basis for leaving them out of the case. These are new teams and new owners, and as far as he is alleging they are part of the NBA that he is

the purpose of the Federal Rules is to get a full hearing on the merits, and that's what we are trying to do. We are trying to prepare a defense for a full hearing on the merits.

THE COURT: The reserve compensation plan, as I understand it, Mr. Stern, I discussed that because of what I found out from the papers on summary judgment, and it seems to me that's in the case. As I told Mr. Gruenberger, as far as I am concerned he doesn't have to amend his complaint to get that in. So you are faced with that.

MR. STERN: I understand, your Honor. All it doe is save us from having someone go back and retype the complaint and proofreading it and all the other things that are making it difficult to manage this litigation.

THE COURT: The No. 2 item I also don't see why he has to amend his complaint to get that in, because that is something else, that is something I didn't know about, and apparently was just discovered, but certainly he is going to be entitled to present proof of that.

What that does to you in terms of work I have no idea.

MR. STERN: On that, despite what we keep reading about in the papers as being price fixing, we assert that a multi employer bargaining unit, which the NBA admittedly is,

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MR. STERN: On that, despite what we keep reading about in the papers as being price fixing, we assert that a multi employer bargaining unit, which the NBA admittedly is,

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suing.

MR. STERN: He is free to go out and attempt to serve them, but I was not about to consent to any amendment at this late stage with respect to additional teams.

THE COURT: I understand that. All I am telling you is that I think he is entitled to that.

I don't understand the last part about conforming the pleadings to the facts.

MR. STERN: I don't understand what that means, either.

MR. GRUENBERGER: I sent Mr. Stern a letter September 24th that laid these out point by point by point. He had no trouble understanding it then.

MR. STERN: I didn't try to understand it.

MR. GRUENBERGER: I will give you a clear example of what it means.

THE COURT: I am not asking for an example. Where can I find it in the papers?

MR. GRUENBERGER: In my moving papers on the amendment motion there is Exhibit C. There is a letter from me dated September 24, 1975, to Mr. Stern. It lists 26 of these so-called housekeeping changes seriatim specifically.

We change the name of the spelling of a team.

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We add a numbering change in an introductory paragraph. We make the change to correspond to the class notice. We make a spelling change. We change the number seventeen teams to eighteen teams because that happens to be the numbe of teams in the League. We add certain new board of governors members, not as defendants but just to explain new people who have come into the case as board members since the case began. That's reading Numbers 1 through 7. Eight was again to change the class designation to the facts.

In 9 we made a typographical spelling error, and wanted to change it. In 10 we wanted to show the truth that the form of the uniform player contract had changed since the institution of this lawsuit. We noted that in the new complaint.

No. 11 in that letter, we made a change to take account of the defendants' own claim that the perpetual reserve clause changed in this case after September 2, 1971, so we put it in the complaint.

All of these things are spelled out specifically Nothing hurts them. It helps them. It makes the case easier to try for both sides.

THE COURT: I suppose you have a right to be careful --

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MR. GRUENBERGER: Careful and honest.

THE COURT: I will accept that. My own view is that none of these changes are very essential to your case, at least not in the federal court, but there is one item that I don't understand.

MR. STERN: We stated in our opposing papers the motion should be denied except to the extent that it seeks to renumber paragraphs and change typographical errors. I don't know Mr. Gruenberger is doing us a favor by adding the name of an additional governor or changing statements about when the uniform player contract came into effect, and things like that. We simply do not want to concern ourselves with those. He is not precluded from offering his proof at trial.

THE COURT: I will look at the amendment with care and I will let you know my view. My present feeling, as I have indicated, is that the reserve clause compensation plan is in the case. If he wants to amend it to allege it specifically I don't think that adds any burden to you.

As to these practices about exchange of information about salary --

MR. GRUENBERGER: It is one paragraph, your Honor.

THE COURT: That doesn't make any difference.

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He has discovered that. That is something that can't be any burden to you. I don't see why he has to have it in the complaint, but as to the definition that is something you agree upon,and he certainly has a right to add these new defendants.

What is this item about the exchange of information? Item 14 is player salary information exchange.

MR. GRUENBERGER: That is the second new restraint we just covered, your Honor.

THE COURT: What's that?

MR. GRUENBERGER: The one where your Honor said I have a right to go into it, and you questioned whether I needed to have an amendment about it. That's the one where the teams learn about the salaries of all the other players even though they are not on their teams and exchange them for the purpose of stabilizing salaries. All I did was add a paragraph about that, Paragraph No. 28.

THE COURT: I certainly can understand Mr. Stern's view aobut that at this late date about making changes.

MR. GRUENBERGER: We discovered it at a late date. He asked questions about it, and so did we. There really isn't any more work to be done.

THE COURT: I will go over the amendments. The only

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thing I guess I have any problem about is that coverall item, the last item.

MR. STERN: Just so my statement for the record is clear, your Honor, the fact that Mr. Gruenberger is graciously consenting not to conduct further discovery on an alleged restraint doesn't mean there is no more work for the NBA to do in terms of preparing a defense against it, no matter what the merits are to the claim.

THE COURT: The reserve compensation plan is in the case, Mr. Stern, and you are going to have to defend agains that whether you realized it or not.

MR. STERN: I am talking about the other one specifically, your Honor, this new alleged exchange of salary information, which is not in the complaint, and has not been referred to before, and Mr. Gruenberger is quite right, he learned about it probably in June of 1975. I can't dispute that.

MR. GRUENBERGER: Or July. But if I learn something during discovery that I am not allowed to put in the case, what is the point of having discovery?

THE COURT: You may be allowed to put it in the case. You don't have to, just because you learned something, have to go and amend your complaint.

MR. GRUENBERGER: Mr. Stern is saying it shouldn't

be in the case at all. That's what he is saying.

THE COURT: I have already told you that as far as I am concerned that information is not any new restraint or anything like that; it is a means of keeping the restraints that you ought to be arguing, of keeping the restraints intact and, therefore, you have a right to prove it. I don't see why you hae to put it in as an amendment, but that's up to you.

MR. STERN: On the order with respect to the witnesses, the attorneys, you indicated it was first class travel and $100 per day for expenses to plaintiffs.

THE COURT: No. That's to Mr. Gruenberger or his representative, $100 a day.

MR. STERN: Is that an attorney's fee?

MR. GRUENBERGER: Plus expenses, I would assume, such as hotel.

MR. STERN: I would like to address myself to that for a second. Mr. Gruenberger noticed the deposition of Elmer Rich, former NBA owner, Earl Foreman in Washington, D. C., a third party witness, Marvin Kratter. Is that a rule that he is seeking, that anyone who takes a third party witness --

THE COURT: If you apply to me for the defendants' expenses on that, you are entitled to it. It is my practice

Exhibit 3

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NATHASASSN NYK

C35459A287 1727EST

ZCZC E13 PD NEW YORK NY
MS SEYMOUR S. GOLDBERG, ESQ.
SUITE 1ACC
16633 VENTURAL BLVD.
ENCINO, CALIFORNIA 91316
BT

OCTOBER 14, 1975

NBA COMMISSIONER LAWRENCE F. O'BRIEN ANNOUNCED TODAY THE FOLLOWING:

"PREVIOUSLY I STATED AND REITERATED THAT WILT CHAMBERLAIN MUST REPORT TO THE LOS ANGELES LAKERS AND IF THE LAKERS ELECTED TO UTILIZE HIS SERVICES I WOULD PERSONALLY INTERVENE IN ANY RESULTING CONTROVERSY IN ORDER TO DETERMINE 'RESPECTIVE RIGHTS OF THE PARTIES, INCLUDING THE RIGHTS, IF ANY, THE LAKERS RETAIN IN CHAMBERLAIN'S SERVICES.'

"HOWEVER, WEEKS HAVE ELAPSED AND CHAMBERLAIN HAS NOT FULFILLED THIS REQUIREMENT. HIS ATTORNEY HAS WRITTEN LETTERS AND ISSUED INNUMERABLE PRESS STATEMENTS, BUT IN NO WAY HAS THERE BEEN A GOOD FAITH EFFORT TO RESOLVE THIS CONTROVERSY.

"WITH OUR SEASON A SCANT NINE DAYS AWAY, THESE TACTICS HAVE CREATED AN INCREASINGLY UNTENABLE SITUATION FOR THE LAKERS IN TERMS OF THEIR ROSTER AND FOR THE NBA.

"THEREFORE, I AM TODAY REMOVING WILT CHAMBERLAIN'S NAME FROM THE LOS ANGELES LAKERS' SUSPENDED LIST, THEREBY MAKING HIM A 'FREE AGENT.' CHAMBERLAIN IS FREE TO SIGN WITH ANY TEAM IN THE NBA."

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Exhibit 4

information and my ruling stands.

Let's go on to something else.

MR. FURTH: The next item we have you will see in my affidavit, page No. 6. This relates to both Mr. Wirtz and Mr. Mulley. We asked them questions about the petition the New York Nets and the Nuggets for admission into the NBA. We allege continuing conspiracy. They take the position they couldn't answer because it occurred after the fact.

MR. CARDOZO: Mr. Furth slightly mischaracterized our position, your Honor. The Denver-New York application occurred on September 25th, which was two weeks after you had ruled all discovery had to end by February 1st.

First of all, as we read the ABA cross claim and see how the Denver and New York situation --

THE COURT: I frankly don't see how you can take the position that they can't inquire into conversations with teams that they are now alleging, at least there has been some representation at least here -- I suppose they haven't alleged it; the Players Association alleges some kind of conspiracy, but that's another case. All right.

MR. CARDOZO: Your Honor, not only do

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we think it is in their cross claim, but if we are going to go into discovery on Denver and New York, starting on September 25th, they are going to take every NBA owner on the issue and they we will start all the ABA discovery again.

THE COURT: That's not before me.

MR. CARDOZO: Excuse me, your Honor, then we would have to be prepared, we would have to take discovery to defend against it if it is a relevant issue. If they are going to ask Mr. Mulley and Mr. Wirtz --

THE COURT: I don't understand. Mr. Cardozo, the point is there have been discussions, if there had been, between these people and the NBA, and they don't know anything about it, and they are inquiring into it in terms of getting information on their theory that you have been trying to do them in, and I don't understand, since you know what the discussions are, why, therefore, you have to do anything else about it. I really don't understand that.

MR. CARDOZO: Your Honor, we have already finished taking depositions of Mr. Carlson, Mr. Bowe, and we are about to take the deposition of Mr. Schier and all the other ABA people on this issue.

The ABA, your Honor, shortly thereafter had

all the other teams apply to the NBA. This is the horrible act of accepting -- we would have to develop all those facts, your Honor. In this late hour of discovery we didn't think the issue of Denver-New York should be going into this case.

THE COURT: I wish it weren't in either, but it appears to me that the application that Denver-New York made in view of the complaint filed here, that you have a monopoly of trying to run them out of business, trying to destroy them, and destroy them as a league, I think that's part of their cross claim against you, and --

MR. CARDOZO: And when that cross claim is copied by the ABA Players Association, they added that the action of Denver and New York applying to the NBA was a conspiracy to drive them out of business.

THE COURT: I don't see how I can make a ruling with the representation made to me, and there has been no evidence, and I don't see if Mr. Furth was to proceed to attempt to have proof of that at the trial --

MR. CARDOZO: Your Honor, I don't see how --

THE COURT: I can't see how I can do that.

MR. CARDOZO: I don't see how I can be precluded from conducting meaningful discovery on that issue either.

THE COURT: The point I don't understand is what do you have to discover.

MR. CARDOZO: What New York says, Denver says and other people might say.

THE COURT: Denver and New York people have indicated to you, and you know what they have indicated to you and what they have done to you and you have been talked to; they are talking about what you have done. I don't understand what you have to discover. What Mr. Furth is saying is apparently he is not privy to any of the conversations and he feels he is entitled to have it.

MR. CARDOZO: If Denver and New York saw fit to make an application, your Honor.

THE COURT: Well, all right, but I don't see what that means. All of a sudden, because they are not privy to it, he says he wants to have the conversation, how all of a sudden that means you are going to be burdened.

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MR. CARDOZO: It's just that many more depositions.

THE COURT: You know what conversations you had with these people on the matter.

MR. CARDOZO: Does that mean all the people who participated in the conversation, if any, would have to testify about them?

THE COURT: I don't have any notion as to what the conversation is going to reveal or what he can do or if there is going to be anybody coming to trial that is going to be relevant. But you are asking a lot of questions in terms of deposition that you probably know you wouldn't use or can't use in order to be prepared for trial. On this issue I don't see how Mr. Furth can be barred from asking questions. I don't see how that is going to burden you.

MR. CARDOZO: I won't prolong it, your Honor.

MR. FURTH: Your Honor, the next item we have is on page 9 of my affidavit. Pages 7 and 8 simply established -- the actual question is on page 9, 19. Pages 7 and 8 simply establish, your Honor, that Mr. Cook owns 100 per cent of California Sports,

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al., Plaintiffs, -against- NATIONAL BASKETBALL ASSOCIATION, et al., Defendants.	:	70 Civ. 1526 (RLC)
AMERICAN BASKETBALL ASSOCIATION, et al., Cross-claimants, -against- NATIONAL BASKETBALL ASSOCIATION, et al., Cross-defendants.	:	

ANSWERS TO CROSS-CLAIMANT AMERICAN BASKETBALL ASSOCIATION'S THIRD SET OF INTERROGATORIES BY CROSS-DEFENDANT BOSTON CELTICS BASKETBALL CLUB, INC.

Cross-defendant Boston Celtics Basketball Club, Inc. hereby makes the following answers to Cross-claimant American Basketball Association's Third Set of Interrogatories. In accordance with the May 19, 1975 ruling of this Court, and for the reasons set forth in this cross-defendant's December 8, 1975 responses and objections to the ABA's third set of interrogatories, the information supplied is for the period January 1, 1970 to the present.

These answers are being given before complete discovery and factual investigation in this case has been completed. This cross-defendant therefore reserves its right to supplement its answers at a subsequent time.

indemnity agreements are also shown by such contracts. Therefore the information sought by subparts (a)-(c) can be ascertained from documents produced and the burden of ascertaining the information is substantially the same for cross-claimants as for this cross-defendant.

The following payments were made pursuant to the agreement(s) to indemnify entered into by this cross-defendant: Not applicable.

Player	Payment(s) Made	Date(s) of Payment(s)

All documents relating to the indemnities have been produced.

INTERROGATORY NO. 12:

Identify for each year, each player on your team who achieved so-called "free-agent" status. For purposes of this interrogatory a "free-agent" is defined as a player who is no longer under contract because: (1) he finished playing through the option period of his contract; (2) his contract contained no option and he finished playing through the term of his contract; or (3) the option in his contract was not exercised.

Answer to 12:

See this cross-defendant's supplemental answer to Interrogatory 24 of Plaintiffs' First Set of Interrogatories which identifies players who achieved "free-agent" status by playing through the option period of the contract.

The following players, from 1970 through 1975, achieved "free-agent" status because the contract contained no option and the player played through the term of his contract, or because the option in the contract was not exer-

cised:

1970:

1971:

1972:

1973:

1974:

1975: Don Chaney

INTERROGATORY NO. 13:

State whether you ever owned, in whole or in part, or operated, (i) a professional hockey team or (ii) a facility in which professional basketball or hockey is or has been played, and if so:

(a) Identify the professional hockey team or facility involved;

(b) Set forth the ownership interest, if any, you had in such team or facility;

(c) State when you had such an ownership or operating interest; and

(d) Identify the professional basketball or hockey teams that played in that facility.

Answer to 13:

See this cross-defendant's answer to Interrogatory 41 of the ABA's second set of interrogatories.

INTERROGATORY NO. 14:

Identify (by caption title, court or other body before whom the matter was or is pending, index number, citation to all decisions officially or otherwise reported, and name and last known address of the attorneys who represented you) all lawsuits, arbitrations, or other adversary proceedings in which:

(a) You were a party and any of the following were adverse parties to you: the NBA, NBA member teams, the ABA, ABA member teams other than yourself, owners of former or present ABA teams, potential buyers of an ABA team, NBA players, ABA players, agents of NBA or ABA players, colleges or universities, the National Collegiate Athletic Association, local television or radio stations, national radio or television networks, or owners or operators of facilities; and

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al., Plaintiffs, -against- NATIONAL BASKETBALL ASSOCIATION, et al., Defendants.	:	70 Civ. 1526 (RLC) ORDER TO SHOW CAUSE FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER
AMERICAN BASKETBALL ASSOCIATION, et al., Cross-claimants, -against- NATIONAL BASKETBALL ASSOCIATION, et al., Cross-defendants.	:	

Upon the annexed affidavit of Michael A. Cardozo, sworn to the 3rd day of February, 1976, the Certificate dated February 3, 1976 of Michael A. Cardozo pursuant to Rule 65 of the Federal Rules of Civil Procedure, the complaint filed by named plaintiff Chester Walker in the United States District Court for the Eastern District of Pennsylvania in an action entitled Chester Walker v. National Basketball Association, et al. (Civil Action No. 76-291), and all the prior proceedings in this action, including the authorization of plaintiff Chester Walker to commence this action on his behalf, the complaint and second amended and supplemental complaint filed herein by, among others, plaintiff Chester Walker, the order of this Court dated February 14, 1975 certifying this case as a

class action under Rule 23(b)(1), F.R. Civ. P., and after hearing Proskauer Rose Goetz & Mendelsohn, attorneys for the moving defendants, and Weil, Gotshal & Manges, attorneys for plaintiffs herein, and sufficient cause appearing therefor, it is hereby

ORDERED, that plaintiff Chester Walker show cause before this Court, on February 3 , 1976, at 4^15 P M., or as soon thereafter as counsel can be heard, in Room 1106, United States Courthouse, Foley Square, New York, New York, why this Court should not enter an order, pursuant to Rules 23(d) and 65 of the Federal Rules of Civil Procedure, and the inherent powers of the federal courts, granting defendant National Basketball Association and its member teams a preliminary injunction enjoining and restraining plaintiff Chester Walker, his agents, attorneys and all persons acting in concert with them, from prosecuting in any manner the aforesaid action in the United States District Court for the Eastern District of Pennsylvania, and assessing the NBA defendants' costs incurred in connection with this motion, including reasonable attorneys' fees, against Mr. Walker's Pennsylvania attorney.

And it further appearing to this Court from the annexed affidavit of Michael A. Cardozo that immediate, substantial and irreparable injury to defendant National Basketball Association and its member teams may occur, and this Court's jurisdiction may be undermined, if plaintiff Chester Walker, and his agents, attorneys and all persons acting in concert with them, are permitted to

continue to prosecute the aforesaid Pennsylvania action before a decision on this application for a preliminary injunction is made, and after hearing oral argument on the application for a temporary restraining order by the attorneys for the moving defendants, and the attorneys for the plaintiffs herein, and upon the moving defendants posting security as fixed by this Court in the sum of $ 5,000 , conditioned as required by law, it is further

ORDERED, that pending the hearing and determination of the moving defendants' motion for a preliminary injunction, plaintiff Chester Walker, and his agents, attorneys and all persons acting in concert with them, are hereby temporarily restrained from taking any steps in connection with, or prosecuting, the action in the United States District Court for the Eastern District of Pennsylvania, entitled Chester Walker v. National Basketball Association, et al. (Civil Action No. 76-291); and are hereby further temporarily restrained from filing or attempting to prosecute any other actions or lawsuits in any other court concerning the same matters and issues raised in the Robertson action or arising out of any or all of the same transactions, occurrences or events which are at issue in the Robertson action; and it is further

ORDERED, that service of this order to show cause, together with copies of the papers upon which it is made, shall be deemed good and sufficient service if made in the following manner on the following persons, on or before 4:30 P M. on February 4 , 1976:

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(a) On plaintiffs, by serving a copy of the same by hand on their attorneys, Weil, Gotshal & Manges, 767 Fifth Avenue, New York, New York;

(b) On plaintiff Chester Walker, by serving him as follows: (i) on his attorneys in this action, by hand delivering a copy of the same on Weil, Gotshal & Manges, 767 Fifth Avenue, New York, New York; (ii) on his attorneys in the aforesaid Pennsylvania action by mailing a copy of the same to Richard G. Phillips, Esq., 1622 Locust Street, Philadelphia, Pennsylvania 19103; and (iii) on plaintiff Chester Walker personally, by mailing, by certified mail, return receipt requested, a copy of the same to him at 88 West Schiller Street, Chicago, Illinois, said plaintiff's last known address;

(c) On defendants Madison Square Garden Center, Inc. and Madison Square Garden Corporation, by serving a copy of the same by hand on their attorneys, Paul, Weiss, Rifkind, Wharton & Garrison, 345 Park Avenue, New York, New York;

(d) On cross-claimants American Basketball Association and its member teams, other than Long Island Sports Enterprises, Inc.,

by serving a copy of the same on their attorney, Michael H. Goldberg, Esq., of counsel to said cross-claimants, by hand-delivering a copy of the same to him at 1700 Broadway, New York, New York; and

(e) On cross-claimant Long Island Sports Enterprises, Inc., by serving a copy of the same by hand on its attorneys, Spengler, Carlson, Gubar & Churchill, 280 Park Avenue, New York, New York.

/s/
U.S.D.J.

Issued at 4:30 P.M. on February 3d, 1976 at New York, New York.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al.,

Plaintiffs,

- against -

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants.

70 Civ. 1526 (RLC)

AFFIDAVIT

AMERICAN BASKETBALL ASSOCIATION, et al.,

Cross-claimants,

- against -

NATIONAL BASKETBALL ASSOCIATION, et al.,

Cross-defendants.

STATE OF NEW YORK)
: ss.
COUNTY OF NEW YORK)

MICHAEL A. CARDOZO, being duly sworn, deposes and says:

1. I am a member of Proskauer Rose Goetz & Mendelsohn, attorneys in this action for the NBA defendants other than Madison Square Garden Corporation and Madison Square Garden Center, Inc. I make this affidavit in support of the NBA defendants' motion, pursuant to Rules 23 and 65 of the Federal Rules of Civil Procedure, to temporarily restrain and preliminarily enjoin Chester Walker, one of the named plaintiffs in the Robertson action, from prosecuting an action he filed on January 30, 1976 in the United States District Court for the Eastern

District of Pennsylvania. The NBA defendants further seek costs incurred with respect to bringing this motion, including reasonable attorneys' fees, against Mr. Walker's Pennsylvania attorney.

2. As more fully described below, the Walker action seeks the identical relief from some of the identical practices challenged in this class action, in which Mr. Walker is one of the fourteen named plaintiffs. The Walker action challenges as violations of the Sherman Act the NBA's college draft, the NBA's option clause, the NBA's tampering rules, and the NBA's compensation policy, insofar as said practices have affected Walker. As is well known to this Court, those same practices are challenged in this action. In fact, Mr. Walker gave written authorization for the Robertson class action to be commenced on his behalf.

3. The commencement of the Walker action almost six years after Mr. Walker authorized the commencement of, and became a named plaintiff in, the Robertson class action, is no more than a complete and utter assault on the jurisdiction of this Court and the Court's class action certification. Prosecution of the Walker action should be enjoined, just as this Court (i) in January of 1976, temporarily enjoined class plaintiff Wilton N. Chamberlain from prosecuting in California an action which, just like the Walker action, sought the identical relief from some of the identical practices challenged in the Robertson class action, and (ii) in February of 1974, enjoined the American Basketball Association ["ABA"] from prosecuting in California an action closely related to the instant one.

4. Not only is Mr. Walker, who is one of the fourteen named plaintiffs and whose deposition was taken in this action on August 26-27, 1975, aware of the issues involved in the Robertson action, but so is his Pennsylvania attorney, Richard G. Phillips, who, in his role as an agent for numerous basketball players, had his deposition taken in the Robertson case on November 10, 1975. Furthermore, upon information and belief, Mr. Walker, or at least his Pennsylvania attorney Mr. Phillips, had actual knowledge of the NBA defendants' motion for a preliminary injunction against prosecution of class plaintiff Wilton N. Chamberlain's California action, and the Court's tentative views expressed at the argument of that motion. Notwithstanding such knowledge, Walker's Pennsylvania attorney went ahead and commenced his duplicative action in the Eastern District of Pennsylvania. The temporary restraining order and preliminary injunction sought herein, together with the costs of this motion sought against attorney Phillips, should issue not only because of the unnecessary burdens and harassment worked upon this Court and the NBA defendants, but also as a deterrent to future duplicative lawsuits filed in utter disregard of the Rule 23(b)(1) class action certification in the Robertson action.

5. Contemporaneous with the filing of his law in Pennsylvania, Mr. Walker sought a temporary restraining order against the practices of the NBA defendants challenged therein. That motion was denied on the same day, January [illegible], 1976, by the Honorable J. William Ditter, Jr. of the United States District Court for the Eastern District of Pennsylvania, who scheduled a hearing for Monday, February 9, [illegible]

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on Walker's application for a preliminary injunction. I have been advised that a status conference in Walker's Pennsylvania action is scheduled for 4:30 P.M. on Wednesday, February 4, 1976.

A COMPARISON OF THE WALKER AND ROBERTSON COMPLAINTS

6. Comparison of the Walker complaint, a copy of which is annexed hereto as Exhibit A, with the second amended and supplemental complaint in this action (hereinafter "Robertson complaint"), a copy of which is annexed hereto as Exhibit B, reveals that every substantive allegation in the Walker complaint finds its parallel in the Robertson complaint.

7. Walker claims that the activities of the NBA defendants constitute a boycott and concerted refusal to deal in violation of Section 1 of the Sherman Act. (Walker complaint, Count I) Walker also complains that the activities of the NBA defendants are violations of the monopolization provisions of Section 2 of the Sherman Act. (Walker complaint, Count II) Such alleged violations of the Sherman Act are identical to alleged violations in the Robertson action. (Robertson complaint, Counts One and Two).

8. Alleged in the Walker action as specific violations of the Sherman Act are the following NBA practices which, as this Court is well aware, are also challenged in the Robertson action:

(a) the NBA's college draft (Walker complaint, ¶24(a), Robertson complaint, ¶¶21-22, 36);

(b) the NBA's option clause (Walker complaint, ¶24(b), Robertson complaint, ¶¶25-27, 36, 45-46);

(c) the NBA's compensation policy (Walker complaint, ¶24(c), Robertson complaint, ¶¶43-44); and

(d) the NBA's tampering rules (Walker complaint, ¶15, Robertson complaint, ¶¶27, 36).

9. In the face of such obvious duplication of claims for relief in the Walker and the Robertson actions, it is difficult to conceive why Mr. Walker and his Pennsylvania attorney have filed the Pennsylvania action, particularly when Mr. Walker's Pennsylvania attorney not only knew about the Robertson action but also about the proceedings in this Court with respect to the Chamberlain action. Such an undisguised assault upon the jurisdiction of this Court cannot be countenanced. Not only should the Walker action be enjoined, but also the NBA defendants' costs in bringing this motion, including reasonable attorneys' fees, should be assessed against Mr. Walker's Pennsylvania attorney, Mr. Phillips.

THE ROBERTSON ACTION

10. This class action was commenced on April 15, 1970. One month before its filing, on March 14,

1970*, named plaintiff Walker signed a document in which he authorized the National Basketball Players Association "to initiate one or more class actions on my behalf against the National Basketball Association . . . in order to bring about an end to any agreement among the clubs or other entities to eliminate competition among them in the acquisition of talent . . . . In addition, you are hereby authorized . . . to assert a claim for damages on my behalf." A copy of the authorization Mr. Walker signed is annexed hereto as Exhibit C.

11. Despite this authorization, and the subsequent commencement of this class action, plaintiff Walker has seen fit to attempt to undermine the jurisdiction of this Court and to commence a separate and duplicative action.

12. As noted above, the second amended and supplemental complaint in this action contains specific reference to the practices of the NBA challenged in the Walker complaint -- the option clause in the NBA Uniform Player Contract, the NBA college draft, the NBA tampering rules, by which an NBA player is prohibited from negotiating with another NBA team during the term of his contract, and the NBA compensation policy, whereby an NBA team is obligated to compensate another NBA team in the event that a team signs a player of a former team whose option with the former team has expired.

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* Although Walker's authorization is dated March 14, 1970, Mr. Walker testified at his deposition in the Robertson action on August 27, 1975, that the authorization was signed on March 14, 1970 (transcript at 340-341).

13. On February 14, 1975, this Court, over the vigorous opposition of the NDA defendants, granted the motion of plaintiffs, including plaintiff Walker, for class action certification (389 F. Supp. 867 (S.D.N.Y. 1975)). Certifying the case as a class action under Rule 23(b)(1), the Court found that "separate actions could establish incompatible standards of conduct for the NBA." (389 F. Supp. at 901). "[I]f this action were allowed to continue only for the benefit of the named plaintiffs", this Court wrote, "it is conceivable that other members of the proposed class would file similar complaints in other courts. The court might grant injunctive relief, another court might refuse, and a third may give relief which differs in material respects from the first." (389 F. Supp. at 901). (Footnote omitted) There can hardly be a dispute that these observations apply to similar complaints, filed in different courts by one of the named plaintiffs, which is exactly what plaintiff Walker has done.

THE RELIEF REQUESTED
SHOULD BE GRANTED

14. This Court is intimately familiar with the mammoth pre-trial discovery proceedings that have occurred in this case, including a two-day deposition of plaintiff Walker and a one-day deposition of Mr. Phillips, his Pennsylvania attorney. The Court is also aware that (i) in January, 1976, on the application of the NBA defendants, it temporarily restrained class plaintiff Wilton N. Chamberlain from prosecuting in California a lawsuit duplicative of the Robertson action, and (ii) in February, 1974, also on the

application of the NBA defendants, it enjoined the ABA from prosecuting in California a lawsuit closely related to this case. The Court is also aware that it has directed the Robertson case to go to trial on or about June 1, 1976.

15. Under the circumstances, Mr. Walker's Pennsylvania action is absolutely inconsistent with the simultaneous maintenance of this action in which Mr. Walker is a named plaintiff and which was instituted with Mr. Walker's specific authorization.

16. The sound administration of justice would be undermined if the NBA defendants, while preparing the Robertson case for trial, had to defend against Mr. Walker's Pennsylvania action. Defending against Walker's Pennsylvania action would require the NBA defendants (i) to resist Mr. Walker's preliminary injunction motion now scheduled for hearing in Philadelphia on February 9, and (ii) to subject themselves to pre-trial discovery on the same issues extensively discovered about in Robertson. For the Walker action to be allowed to proceed, when decisions or relief in that action might conflict with the decisions or relief this Court might render or grant on the same issues, would be ludicrous, particularly since the possibility of inconsistent relief and decisions was one of the factors on which this Court relied in certifying this case as a 23(b)(1) class action.

17. The assault on the jurisdiction of this Court is clear; the prejudice the NBA defendants would suffer if

the Walker action were permitted to go forward is equally clear. Moreover, when viewed in light of the fact that Mr. Walker's Pennsylvania attorney had knowledge not only of the pendency of the Robertson action but also, on information and belief, of this Court's hearing on the NBA defendants' motion to enjoin the Chamberlain action and the Court's tentative views expressed at that preliminary injunction hearing, the harassment and additional burdens caused by the filing of the Walker action warrant this Court's assessing the NBA defendants' costs against attorney Phillips. Such an award of costs would act as a deterrent against future attempts to circumvent the jurisdiction of this Court by filing duplicative actions in other federal district courts from coast to coast.

CONCLUSION

18. The reason why this application is being brought on by an order to show cause, rather than by motion, is that time is of the essence because of (i) the January 30, 1976 filing of the Walker action; (ii) the February 4, 1976 scheduled conference in that action; (iii) the February 9, 1976 scheduled hearing in that action on Walker's motion for a preliminary injunction, a hearing for which the NBA defendants must promptly prepare if the relief requested herein is not granted; and (iv) the fact that the NBA is by this affidavit applying for a temporary restraining order.

19. No prior application for the relief sought herein has been made.

WHEREFORE, it is respectfully submitted that the order to show cause should be signed, a temporary restraining order should be issued, and, upon the return day of the motion, (i) a preliminary injunction should be issued enjoining named plaintiff Chester Walker from prosecuting his Pennsylvania action, and (ii) costs, including reasonable attorneys' fees, be assessed against Mr. Walker's Pennsylvania attorney, Mr. Phillips.

Michael A. Cardozo

Michael A. Cardozo

Sworn to before me this
3rd day of February, 1976.

Philip Castellano Jr

PHILIP CASTELLANO JR.
NOTARY PUBLIC, State of New York
[illegible]
Qualified in Nassau County
Certified in New York County
Commission Expires March 30, 1977

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Exhibit A

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHESTER WALKER	:	CIVIL ACTION NO.
Plaintiff	:	
v.	:	
NATIONAL BASKETBALL ASSOCIATION	:	
and	:	
LAWRENCE O'BRIEN, Individually, and as COMMISSIONER OF THE NATIONAL BASKETBALL ASSOCIATION	:	
and	:	
CHICAGO BULLS, PHILADELPHIA 76ers KANSAS CITY-OMAHA KINGS, CLEVELAND CAVALIERS, DETROIT PISTONS, GOLDEN STATE WARRIORS, HOUSTON ROCKETS, LOS ANGELES LAKERS MILWAUKEE BUCKS, NEW YORK KNICKERBOCKERS, PHOENIX SUNS, PORTLAND TRAIL BLAZERS, SEATTLE SUPERSONICS, NEW ORLEANS JAZZ, BOSTON CELTICS, ATLANTA HAWKS, BUFFALO BRAVES and CAPITAL BULLETS	:	JURY TRIAL DEMANDED

COMPLAINT

COUNT I

Jurisdiction

1. This claim arises under the Sherman Anti-Trust Act and the Clayton Anti-Trust Act. Jurisdiction is conferred upon this Court by 28 U.S.C. § 1337.

The Parties

2. Plaintiff is a professional basketball player widely regarded as a skilled and outstanding offensive and defensive forward. In 1962 63, he played with the Syracuse Nationals who then became the defendant Philadelphia 76ers,

with whom he played from 1963 through the 1968-1969 season. From 1969 through 1974-75 he played with the defendant Chicago Bulls. During that time, plaintiff was selected for the All-Star team on seven different occasions.

3. Defendant clubs comprise the National Basketball Association, (hereinafter "NBA"), membership Association composed of 18 clubs located in 17 states. These clubs are engaged in the business of staging games, transporting players and equipment, purchasing basketball equipment, contracting with television and radio stations, purchasing and selling refreshment and novelties through concessions at basketball arenas, and other business activities. Defendant O'Brien is the Commissioner of the NBA.

4. Defendants transact business and conduct business activities and are otherwise found within the Eastern District of Pennsylvania.

Defendants' Involvement In Interstate Commerce

5. Defendants are now engaged in interstate commerce and trade, and their activities have a substantial impact on interstate trade and commerce.

6. Defendants engage in interstate trade and commerce, among other ways, in that:

(a) The basketball games staged by the club defendants are broadcast on national radio and television and on local radio and television stations affiliated with national networks. In 1975, defendants collectively derived from all such broadcasts more than Ten Million Dollars ($10,000,000.00);

(b) The staging of basketball games by the club defendants requires substantial travel and communication in interstate commerce and substantial movement of equipment in interstate commerce. The amounts expended by defendants on such travel, communication, and movement exceed Two Million Dollars ($2,000,000.00) a year;

(c) The staging of basketball games by the club defendants requires substantial purchases of equipment and supplies in interstate commerce;

(d) In the staging of basketball games, the club defendants sell tickets across state lines, employ agents across state lines, and advertise across state lines. In 1975, defendants collectively derived from box office receipts of basketball games sums in excess of Thirty Million Dollars ($30,000,000.00);

(e) In the staging of basketball games, substantial sums are expended in interstate purchases from concession sales in basketball arenas;

(f) In the business of staging basketball games, defendants employ facilities of interstate communication and travel to negotiate, and contract with, television and radio networks and stations, concessionaires, basketball players, coaches, officials, agents, and one another.

Structure And Effect Of National Basketball Association

7. Defendant clubs comprise the structure commonly called The National Basketball Association. This structure exists and is perpetuated by virtue of various written and tacit agreements among defendants.

8. Defendant O'Brien, as Commissioner of the National Basketball Association is the central figure in the structure of that organization. The Commissioner has sweeping powers and duties, including among others:

(a) the power to make binding decision on disputes between clubs;

(b) the power to impose fines and discipline upon the clubs and players;

(c) the power to disapprove any contract which a club enters into with a player and thereby blacklist or boycott any player.

9. No person, club, organization or other entity may enter the National Basketball Association without recognizing the Commissioner and submitting to his jurisdiction.

10. Each year at the conclusion of the college basketball season, the clubs in the NBA conduct their annual draft. In accordance with NBA rules each club makes selections on a rotating basis, choosing in an inverse order to the club's standing in the league with respect to their win-loss records.

11. Once a player is chosen by a club only that club may negotiate and contract with that player and that player is deprived of and denied the right to negotiate and contract with any other club in the NBA.

12. The National Basketball Association employs a Uniform Player Contract which all clubs and players are required to conform to in their contractual relationships with one another.

13. Anyone who wishes to play professional basketball in the National Basketball Association must conform to defendants' terms including the "reserve clause" or be foreclosed from participating as a player in the National Basketball Association.

14. Paragraph 22 of the Uniform Player Contract setting forth the "reserve clause," provides, inter alia:

> "On or before August 1 next following the last playing season covered by this contract and renewals and extensions thereof, the Club may tender to the Player a contract for the next succeeding season by mailing the same to the Player at his address shown below, or if none is shown, then at his address last known to the Club. If the Player fails, neglects or omits to sign and return such contract to the Club so that the Club receives it on or before September 1st next succeeding, then this contract shall be deemed renewed and extended for the period of one year, upon the same terms and conditions in all respects as are provided herein, except that the compensation payable to the Player shall be the sum provided in the contract tendered to the Player pursuant to the provisions hereof, which compensation shall in no event be less than the compensation payable to the Player for the last playing season covered by this contract and renewals and extensions thereof."

15. According to NBA rules and regulations, no member team may negotiate with or contract with a player who has not been declared a "free agent" and who is no longer subject to paragraph 22 of the Uniform Player Contract.

16. According to NBA rules and regulations, a member team of the NBA which contracts with a player who has been declared a "free agent" and who is no longer subject to paragraph 22 of the Uniform Player Contract, must compensate the player's former team with a player or players or a draft choice or choices.

17. Plaintiff Walker's contract with the defendant Chicago Bulls expired after the 1974-75 playing season.

18. Following negotiations with the defendant, Chicago Bulls, plaintiff Walker declined to sign a new contract.

19. Defendant Chicago Bulls then invoked paragraph 22 of the Uniform Player Contract.

20. Plaintiff Walker has refused to play for the defendant Chicago Bulls during the 1975-1976 playing season.

21. Plaintiff Walker has requested the defendant Chicago Bulls to declare him a "free agent" thereby entitling him to negotiate and contract with any professional basketball team of his choosing but defendant Chicago Bulls has refused plaintiff's request.

22. Plaintiff has contacted many of the defendant member teams of the NBA who were interested in immediately contracting for his services but who refused to do so because of paragraph 22 of the Uniform Player Contract and the rules and regulations of the NBA governing such actions.

VIOLATIONS CHARGED

23. Defendants have engaged in an unlawful combination and conspiracy in restraint of trade.

24. Defendants, acting in concert for the purpose of furthering the aforesaid combinations and conspiracies in vio-

lation of Section 1 of the Sherman Act, agreed to do and did, among other things, the following:

(a) insured that a player selected in the "draft" is only able to deal with the member team which drafted him by agreeing that every other member team will refuse to deal with a player drafted by another member team;

(b) refused to deal with any player whose rights had not been acquired from another team by trade or by waiver unless that player had been declared a "free agent" and no longer subject to paragraph 22 of the Uniform Player Contract;

(c) made it impossible for a player of all-league stature, such as plaintiff, to contract with any other team, even after being declared a free agent, by mandating that such team would have to compensate the player's former team by a player or players or draft choices of equivalent value.

(d) have engaged in a boycott to prevent plaintiff Walker from playing basketball in the 1975-1976 season, or ever, for any member team of the NBA other than the Chicago Bulls.

25. The effects of the violations alleged herein have been that a substantial amount of interstate commerce has been affected and competition has been foreclosed, restrained and lessened.

26. As a direct and proximate result of defendants' unlawful activites amounting to a concerted refusal to deal, plaintiff has been precluded from pursuing his professional basketball career.

27. As a direct and proximate result of defendants' unlawful conduct, plaintiff has sustained substantial damages.

28. The unlawful conduct of defendants is continuing and unless restrained by Order of this Court will cause irreparable injury and continuing damage and loss to plaintiff.

COUNT II

29. Paragraphs 1 through 24 are incorporated herein by reference.

30. The violations hereinabove alleged constitute an attempt to monopolize, a monopolization and an abuse of monopoly power of professional basketball in violation of Section 2 of the Sherman Act.

31. Paragraphs 25 through 28 are incorporated herein by reference.

WHEREFORE, plaintiff demands:

(a) that defendants be enjoined preliminarily and permanently thereafter from continuing its illegal conduct as alleged above; and

(b) judgment against defendants, jointly and severally, and in favor of plaintiff in threefold the damages determined to have been sustained by him together with costs of suit including a reasonable attorneys' fee; and

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(c) such other and further relief as may appear necessary and appropriate.

DAVID BERGER
RICHARD G. PHILLIPS
RICHARD A. SPRAGUE
BRUCE K. COHEN
1622 Locust Street
Phila., Penna. 19103
(215)732-8000

Attorneys for Plaintiff

OF COUNSEL:

DAVID BERGER, P. A.
Attorneys-At-Law

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Exhibit C

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TO: National Basketball Players Association

This is to authorize you to retain Lawrence Fleisher to initiate one or more class actions on my behalf against the National Basketball Association, and any other entities that you deem necessary or desirable, in order to bring about an end to any agreement among the clubs or other entities to eliminate competition among them in the acquisition of talent, including the prevention of the proposed merger between the NBA and the ABA.

In addition, you are hereby authorized to instruct Mr. Fleisher to assert a claim for damages on my behalf.

Dated: 3/14/69 Clarence Wacker

033776

rgjb

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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OSCAR ROBERTSON, WILLIAM BRADLEY, JOSEPH CALDWELL, MELVIN COUNTS, JOHN HAVILCEK, DONALD KOJES, JON McGLOCKLIN, McCOY McLEMORE, THOMAS MESCHERY, JEFFREY MULLINS, WESTLEY UNSELD, RICHARD VAN ARSDALE & CHESTER WALKER, individually and as representatives of all present and future active players in the NBA,

Plaintiffs,

-vs- : 70 CIV. 1562

NBA, a joint venture, MADISON SQUARE GARDEN CENTER, INC., MADISON SQUARE GARDEN CORP., all NBA teams and owners, PRO BASKETBALL, INC., and AMERICAN BASKETBALL ASSOCIATION,

Defendants.

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February 3, 1976

BEFORE:

HON. ROBERT L. CARTER,

District Judge

A P P E A R A N C E S:

WEIL, GOTSHAL & MANGES, ESQS.
Attorneys for plaintiffs NBA Players,
BY: JAMES QUINN, ESQ.,
Of Counsel

BERGER, PHILLIPS, SPRAGUE & COHEN, ESQS.
Attorneys for plaintiff Chester Walker,
BY: RICHARD PHILLIPS, ESQ., and
BRUCE COHEN, ESQ.,
Of Counsel

APPEARANCES (Continued):

PROSKAUER, ROSE, GOETZ & MENDELSOHN, ESQS.
Attorneys for defendant NBA,
BY: MICHAEL CARDOZO, ESQ., and
JEFFREY A. MISKIN, ESQ.,
Of Counsel

PAUL, WEISS, RIFKIND, WHARTON & GARRISON, ESQS.
Attorneys for defendants Madison Square Garden Center, Inc. and Madison Square Garden Corp.,
BY: SIDNEY H. STEIN, ESQ.,
Of Counsel

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MR. PHILLIPS: Good afternoon, your Honor. Richard Phillips and with me Mr. Bruce Cohen.

THE COURT: All right, Mr. Cardozo.

MR. CARDOZO: Good afternoon, your Honor. I am afraid this is becoming a weekly occurrence.

THE COURT: There seems to be light at the end of the tunnel from what I read in the newspapers.

MR. CARDOZO: Perhaps as to part of it, your Honor. We have advised both Mr. Carlson and Michael Goldberg of the ABA of the hearing this afternoon and they indicated doubt as to whether or not they would be here.

Your Honor, I frankly don't understand why any of us have to be here today. Mr. Walker is a named

plaintiff in this case. He is not like Mr. Chamberlain was, who was just a member of the class. Mr. Walker authorized the commencement of this action in 1970 in writing. That action complains of the draft, the option clause, the NBA's tampering rules, the NBA's compensation policy.

That complaint on behalf of Mr. Walker and others says that this should be a class action because otherwise there might be inconsistent relief granted.

Your Honor, we took Mr. Walker's deposition in August for two days. In November we took Mr. Phillips' deposition because Mr. Phillips represents a number of basketball players including Mr. Walker in contract negotiations, and, your Honor, I would state on information and belief that Mr. Phillips learned of the Chamberlain hearing that we held in this courtroom ten days ago and was advised of the views, tentative views, that you had expressed at that hearing as to the merits or demerits of conflicting actions.

On Friday afternoon at 1:00 I got a frantic phone call from an attorney in Philadelphia who has from time to time represented the NBA in Philadelphia and he said I don't know what's going on, but I just got a call from Mr. Phillips and he is applying for a temporary restraining order in the Walker action that he just began before Judge Gitter. What can you tell me?

I didn't know what the Walker complaint was going to say. Neither did he because he didn't have it. I brought him up to date the best I could. A hearing was held before Judge Gitter, I understand, on Friday afternoon and Mr. Walker's application for a temporary restraining order was denied.

Judge Gitter scheduled a pre-trial conference for tomorrow afternoon and set next Monday, February 9th, for a hearing on a preliminary injunction that had been requested by Mr. Walker.

Now, Mr. Walker's Philadelphia complaint, which is Exhibit A to my affidavit, in paragraph 24, your Honor, I think is the key paragraph. It appears on page 7. Sub-paragraph A says the NBA wrongfully as a draft. Paragraph B talks about the option clause, paragraph 22. Paragraph C complains about compensation and paragraph D complains about the tampering.

Your Honor, I don't want to take any more of your time, but I would like to add that I think this has got to stop and I think that this outrageous conduct of bringing an action like this by a named plaintiff who knew all about this case and whose attorney knew all about this case and exactly what was going on justifies the imposition of sanctions in the form of costs against the attorney who

brought the motion. Thank you.

THE COURT: Who is here for Mr. Greenfield?

MR. QUINN: Your Honor, I am Mr. Quinn. I am here representing the plaintiffs in the Robertson action.

THE COURT: Before I hear from Mr. Phillips, do you have anything to say?

MR. QUINN: No, your Honor. I would just as soon hear from Mr. Phillips myself.

THE COURT: Do you take any position in this?

MR. QUINN: Well, our position is, our feeling is that the subject matter of the action filed in the Philadelphia suit is covered by the Robertson complaint.

THE COURT: All right, Mr. Phillips.

MR. PHILLIPS: If your Honor please, while it is admitted that Chester Walker is a named plaintiff in a class action pending before this Court, it is admitted that Mr. Walker's deposition was taken sometime during this past summer and while it is admitted that my deposition was taken in November of 1975, I must state categorically, sir, that I have never seen a copy of the complaint and I still haven't had the opportunity to read a copy of the complaint. It was just handed to me today as an exhibit here, a copy of the complaint filed before this Court.

THE COURT: Mr. Phillips, that is not valid.

You were aware the action was pending. If you were interested you could have seen a copy of it and I would suggest that in terms of advising your client you probably had an obligation to see a copy of it, so I am sorry, I am not at all impressed with that beginning.

MR. PHILLIPS: If your Honor please, I requested a copy from the counsel representing Chester Walker and the other named plaintiffs in the class action suit before this Court and was advised one would be sent down to me. It was never sent down.

We were faced with what I felt was a matter of tremendous urgency that separates Chester Walker from all the other persons in this class. What separates Chester Walker from the other persons in this class, sir, is that Chester Walker is not playing basketball today. He has been offered $165,000 to play this year for the Chicago Bulls under the option clause, or what I would term the reserve clause, but what I understand the NBA says is an option clause plus compensation.

At the beginning of the year Chester Walker declined their offer of $150,000 and Chicago thereafter sent out telexes to the entire league directing that none of the other general managers or owners in basketball, or in the National Basketball Association deal with Chester Walker,

for to do so would be a violation of their tampering regulations.

Thereafter Mr. Walker came to me and asked me what if anything could be done for him. He had taken this matter with counsel in the class action and nothing was done as far as moving to get a preliminary injunction against the operation of what I would call the group boycott, the operation of the reserve clause or the option clause as it affects Chet Walker.

Today there are at least three teams in the National Basketball Association who would love to employ Chet Walker since Chet Walker is reputed to be one of the better players and a person who has been an all-star. During his career spanning some 12 years he has been an all-star seven times.

The Los Angeles Lakers, the New York Knicks, the Detroit Pistons would all like to have Chet Walker if we were free. However, nothing has been done to represent Mr. Walker in this regard in order to try to attempt to secure for him the freedom which I maintain he is entitled to. Nothing was ever done --

THE COURT: That's not true. One of the issues in the case is precisely that, but the fact is the matter hasn't come to trial. The matter has been set for trial

and one of the issues that the players are asserting here is the illegality of just such action as that and if the matter did come to trial I am sure that that would be one of the issues that would be pressed, so the only thing you can say is that the issue is before the Court in this form, but it hasn't come to trial.

MR. PHILLIPS: But, sir, that issue that's before the Court, and this is where I say Chester Walker has a separate and distinct claim. That issue that is before this Court would entitle Chester Walker to damages. If at the time of trial it is determined that that option clause or reserve clause is violative of the antitrust laws, Chester Walker then would become entitled to damages.

However, it is our claim that he is entitled to freedom today and this is something that's never been brought before this Court and this is something that I maintain should have been brought in the past for Chester Walker and something I felt incumbent upon me to bring to the Court's attention because I feel irreparable damage is being done Chester Walker. Every day he fails to play basketball his career is escaping him, sir.

THE COURT: The only thing I can suggest to you is if you felt that way, your cause of action was to seek to intervene in this case, not bring a new action some

place else.

MR. PHILLIPS: I started to bring an action -- I brought an action which sought preliminary relief. We are up against a February 1st deadline as far as a trade in the NBA, up against a May 1st deadline as far as Chet Walker being able to play for a team and be eligible for the play-offs.

Practically speaking, sir, if Chet Walker does not get to play during the month of February 1976 there is no team that would want to contract with him in March for the balance of the season since Mr. Walker would not be eligible for the play-offs and Walker's value at this stage in his career is certainly in its twilight period at the age of 36 at this time, it is to a team who is looking for an experienced player to help them down the stretch, so to speak, and through the play-offs and that's the only reason the team would contract with Walker.

So what I am really urging the Court is this: That if someone -- if you, sir, were in a position where all the other judges of this district were bringing an action, you were involved in a class action but you were the only one who separate and aside from all the rest could not sit for some certain reason, sir, I am certain you would deem it to be irreparable damage being done to you every

day that you could not sit as a judge, and that's what I am saying regarding Chet Walker. He ought to have the right to pursue this in the Courts.

(Continued on page 11.)

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When I discussed this with New York counsel, this possibility of intervening, I was advised that your Honor had ruled that no action for preliminary relief would be heard by this Court, that it was determined that the matter was coming to trial on June 1st and that prior thereto there would be no action for preliminary relief entertained by this Court. I discussed this with counsel for the NBA, Mr. Fleisner. Mr. Fleisher is the head of the Players Association. Mr. Fleisher advised the players on several occasions your Honor would not entertain any application for preliminary relief in this case.

I don't know how that came up, in what context, whether it was in the context of Walker asking Mr. Fleisher whether or not the attorneys for the Players Association would in fact bring an action for a preliminary injunction here and that is the reason as far as Walker is concerned I told Larry Fleisher I thought we needed preliminary relief for Chet Walker and I thought Chet Walker ought to have the right to play and earn a living during this present season, and that he is at the end of his career and only by playing now can he extend his career another year or two and if he does not play this year for all practical purposes it is the end of his career, notwithstanding that it really terminates his career if he sits

out this whole year. He ought not be in the position where the only person who is really suffering under this option clause in that he cannot claim while teams wish to employ him at this time, he cannot play because of the operation of this clause, this option and reserve clause, and the group boycott that surrounds this clause.

I think Mr. Walker ought to be entitled to pursue the remedy he seeks, and that remedy is to get a preliminary injunction or at least a hearing on a preliminary injunction so that it may be determined now as to whether or not he would have the right to pursue his career during this season.

THE COURT: All right. Are you through?

MR. PHILLIPS: Yes, sir. Excuse me, your Honor. If I may, I wish to respond to one other thing. I am not clear when this Wilt Chamberlain matter is brought up. It is brought up in a petition filed here today. It states in one part that I was aware of the fact this Court had granted a preliminary injunction enjoining Chamberlain's prosecution in this action, paragraph three, in January, 1976, temporarily enjoined Chamberlain from prosecuting a California action and it goes on and then later it states that "Mr. Phillips had actual knowledge of the NBA defendants' motion for a preliminary injunction against prosecution of class action in plaintiff Wilton N. Chamberlain's California

action and the Court's tentative views expressed at the argument of that motion."

I still don't know today whether or not Chamberlain has been enjoined. I made several efforts to determine that. I called Mr. John Boone, Mr. Chamberlain's attorney in San Francisco. I called him no less than three times. I had Mr. Walker on the telephone with John Boone so we could determine what is happening here. We were advised by Mr. Boone that, one, he was not seeking any preliminary relief, which set his case somewhat apart from ours, and secondly, that he came before the California Court he sought damages and that when he came here, sir, he voluntarily stayed the California action because he was happy to have the decision of this Court on the substantive issues involved in the complaint and at a later time go out to California to litigate the issue of damages out there, and he said at the hearing there was no order from this Court to the effect that he could not pursue any action, he voluntarily stayed the action in California pending the decision in this Court in a class action suit.

THE COURT: He voluntarily stayed it. I think I indicated the problem was I was going to issue an injunction barring continuation of the action and that I would write an opinion on the matter hopefully within ten

days. But your information is correct, no order has been issued, although I think I made it all but -- well, I made it 99 per cent clear what the probable result was going to be.

MR. PHILLIPS: My own point in that regard is I don't think in all fairness this Court can impute knowledge of the percentages in this Court's mind to me as counsel in Philadelphia.

THE COURT: I don't really believe that is valid. The issue is not whether I did or did not issue an injunction against the prosecution of the action in Los Angeles. The question, it seems to me, is whether you were aware of this action and its pendency and whether there was an obligation on your part to act in that regard.

This man is a member of the class, I understand. There is no dispute about that. You haven't disputed that. He signed and authorized the suit to be brought. The issues that you are raising are raised in the suit that is now pending.

The Players Association certainly wants and is seeking not only damages but is seeking to have these practices enjoined and declared to be a violation of the Antitrust Act, which is the same thing that you are doing.

So that as far as you are concerned I have no

problem in my mind that this action has to be enjoined and an injunction is going to be issued barring its continuation in Philadelphia because you are subverting the jurisdiction of this Court. The matter is here and it will be decided here and until the matter is out of this Court with members of the class it is not to be pursued.

Mr. Cardozo, you can settle an order for my signature?

MR. CARDOZO: On the preliminary injunction or the temporary restraining order?

THE COURT: I will sign this. All I need on the temporary restraining order is a short memorandum. I will do that myself. We have had the hearing.

There has to be a stopping point.

You are prepared to put up some security? When was this order served?

MR. CARDOZO: I just handed these papers to Mr. Phillips when he came in today.

THE COURT: We can say on or before 4:30 p.m. on February 3rd.

MR. CARDOZO: That's all right with respect to Mr. Phillips. It's not all right with respect to Mr. Carlson and so forth whom I technically have to serve. Could we make it tomorrow at noon? Mr. Phillips has the papers now.

THE COURT: I will give you tomorrow until 4:30.

MR. CARDOZO: Your Honor, we had $5,000 costs in both the -- that is, our bond in both the injunction against the ABA and the injunction against Mr. Chamberlain. I would submit that that's the maximum that should be ordered.

THE COURT: The order to show cause in the temporary restraining order is now obviously in effect.

Do you want a hearing on the preliminary injunction or do you want to consent to one?

Mr. Phillips, I really don't see what all this is about. I think that the players and the Association are bringing this matter -- I read the newspapers and you do, too. The matter apparently has reached some point where at least 20 players and the NBA, according to the newspaper accounts, there may be some accommodation reached. That accommodation cannot be finalized without the approval of the Court since this is a class action.

I know all the individual players -- this matter has been pending in court since 1970, and now all of a sudden we are beginning to get these things, these various actions, coming up and filed in various places. Obviously it just can't be done. The matter has to be settled in an orderly way. The orderly way agreed to and consented to by your client was to join in the action and authorize

this action which was filed here.

MR. PHILLIPS: May I respond to that, sir?

THE COURT: Yes.

MR. PHILLIPS: The fact that this case is about to be settled, as your Honor has pointed out, a settlement agreement has been reached between the parties which certainly would have to be approved by this Court, points up just what our particular problem is.

THE COURT: It doesn't point up anything. It doesn't mean anything in terms of your action. You filed that action only Friday, as I understand it, and proceeded last week.

MR. PHILLIPS: Yes, sir. My point is this, sir --

THE COURT: Did you know the terms of the agreement at that time?

MR. PHILLIPS: No, sir, I did not know the terms of the agreement.

THE COURT: I don't know it yet.

MR. PHILLIPS: All I can say, sir, is that I understand that the agreement will bring about the end of the option clause for this year. That doesn't help Chet Walker if it brings about the end of the option clause this year. He needs relief now. I would ask the Court for a solution to the problem because I certainly agree that the

administration of justice should be orderly. Why not transfer the Walker case, Walker versus the NBA, here, sir, so that we may have a preliminary injunction hearing before this Court?

THE COURT: I would think that what you ought to do is that you should get in touch with Mr. Fleisher or talk to Mr. Quinn. It seems to me, as I understand it, if there is going to be any agreement that agreement has to be approved by the Court and there has to be notice of the agreement to the class.

It would appear to me what you ought to do is to make your representation at that time if there is anything in the agreement that is not going to cover your client.

MR. PHILLIPS: That is not going to get Chet Walker playing again.

THE COURT: I think that is the best solution I can offer you at the present time. It seems to me that is the way to proceed.

The problem I have is I have signed the order, the temporary restraining order. The issue is that will last for ten days. The issue is is there a hearing being requested on the preliminary injunction.

MR. PHILLIPS: Sir, I would request a hearing.

THE COURT: That is, on Mr. Cardozo's demand for

a preliminary injunction?

MR. PHILLIPS: Yes, sir.

THE COURT: All right. Is that hearing going to be one in which you will desire evidentiary proof?

MR. PHILLIPS: Yes, sir.

THE COURT: How long do you think your proof will take?

MR. PHILLIPS: If you will give me a moment, please, to confer.

MR. CARDOZO: Your Honor, could we have clarification? I assume it is a preliminary injunction hearing on my motion to enjoin the case in Philadelphia.

THE COURT: Yes. He certainly has a right to try to put in evidence that will show he shouldn't be enjoined.

MR. CARDOZO: Yes. I was trying to make sure it was this injunction, and not Mr. Walker's application for a preliminary injunction.

THE COURT: It is your injunction. Since I have stated my views, I don't think you will want to put on much evidence.

MR. CARDOZO: No, your Honor.

THE COURT: So the point is he is going to want to put on some evidence. How much time do you think you are going to need?

MR. PHILLIPS: How much time to prepare or how much time will it take?

THE COURT: Well, both. How much time do you think you will need to present your evidentiary proof?

MR. PHILLIPS: I would think it would take about half a day, perhaps, at the outside, at the longest.

THE COURT: When will you be ready?

MR. PHILLIPS: One week, sir.

THE COURT: The best time I have to give you, and I can give you roughly at that point maybe two and a half to three hours, if I make some adjustments -- it doesn't give you a week, unfortunately -- is this Friday. Mr. Stein and Mr. Greenberg are coming over here at that time. The problem I have otherwise is that I am going to have a hard time scheduling it.

MR. PHILLIPS: I am on trial on a case in Philadelphia. Friday is out for me. I would like it one day next week and ask the Court to perhaps consider that it would take less than half a day.

THE COURT: I will set the matter down for the Friday after next. How is your schedule on that?

MR. CARDOZO: Friday, the 20th?

THE COURT: No, the 13th. That interferes with your long holiday, I am afraid. How does that set with

you?

MR. PHILLIPS: Fine, sir.

THE COURT: Is that all right with you?

MR. CARDOZO: Friday afternoon?

THE COURT: No. I only sit on Fridays until 12, roughly a little before 12:30. So we will have to meet at 10:00.

MR. PHILLIPS: Judge, I wanted to point out, sir, in talking about coming in at the last minute now that this suit has been pending for some six years, that I personally represent over 30 players who are members of that class. I have not brought any actions on their behalf. I brought an action on behalf of Walker because we seek preliminary relief.

I want to know one thing from the Court: Am I correct, sir, if I brought a motion before this Court for a temporary injunction that I would not be granted a hearing on a temporary injunction for Chet Walker versus the NBA?

THE COURT: I think what I would have to order -- the parties are now before me -- I think we are at a stage I am not sure I have to answer that question. I understand they have reached accord. I am going to look at the accord. You are a member of the class and you will see it.

It seems to me that you can make whatever representation in regard to it you want to at that time. That is the way to settle the matter. I don't see how your client is not going to be -- if this suit is settled -- how your client isn't going to be reached that way. I don't see how.

MR. PHILLIPS: He wouldn't be reached that way if your Honor understands the context in which the case is here.

THE COURT: The point is if the parties settle the case and you as a member of the class feel it doesn't protect you, your obligation to your client is to come up and indicate to the Court in which way it doesn't protect you and why you want something else in the settlement.

It seems to me that is how you deal with it. You don't even know whether it protects you or not. I think you had better wait and see what it is.

MR. PHILLIPS: We are in a position where --

THE COURT: This is an abstraction. In the first place the issue you are indicating has been the other clubs are not going to deal with him. If there is an agreement reached, the agreement will deal with that problem in regard to that, and all you are doing is bringing an action and you are going to have to take as long to get the matter

settled in your action and trial and all that sort of business as these people have done here. You can't possibly get this man an injunction and get him into playing basketball, get the matter struck down and so forth by any Court without a full hearing.

MR. PHILLIPS: I understand that. All I ask for is a full hearing on it. Sir, my point is that, if I understand the agreement correctly, it will do away with the option clause after this year.

THE COURT: I don't even know what the agreement is and you don't know what it is, as far as I know. The thing to do is to wait and see it. I understand that there is a possibility that I will know what the agreement is on Friday, if there is such a thing. Wait and see it.

If an agreement has been reached, as one of the representatives of Mr. Walker as a member of the class, you will have an opportunity to see it. At that point it seems to me you can make whatever representation you want. Certainly you may be able to do something about that or have a better knowledge of it on the 13th at the hearing.

MR. CARDOZO: I would like to make two points. First of all, Mr. Walker is not just a class plaintiff. He is represented at the present time in this action by Weil, Gotshal.

THE COURT: He can always fire his lawyers, I guess.

MR. CARDOZO: I wonder if we could have an agreement that I will get Mr. Phillips' papers, if any, a couple of days before the hearing so we might respond.

MR. PHILLIPS: Certainly.

THE COURT: You wanted a week and today is the 3rd. Serve your papers by the 10th.

MR. PHILLIPS: Yes, sir.

MR. CARDOZO: Your Honor, I am a little puzzled as to what evidence Mr. Phillips intends to introduce because I am afraid that what we may be envisioning is something --

THE COURT: You want to answer that?

MR. PHILLIPS: Sir, I don't think I have to respond at this point as to what evidence I intend to produce.

THE COURT: I think he has a right, as you know, to attempt to show his entitlement to pursue this action. One of the things he argued is that this is a different and unique case for his client.

Whatever other matters may come up, if anything goes beyond the realm of appropriate evidence, you know what to do, Mr. Cardozo. I have had enough experience to know you know what to do.

MR. CARDOZO: Thank you.

(Time noted: 4:15 p.m.)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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OSCAR ROBERTSON, WILLIAM BRADLEY, JOE CALDWELL, ARCHIE CLARK, MEL COUNTS, JOHN HAVLICEK, DONALD KOJIS, JON McGLOCKLIN, McCOY McLEMORE, THOMAS MESCHERY, JEFFRY MULLINS, WESTLY UNSELD, RICHARD VAN ARSDALE and CHESTER WALKER, individually and as representatives of all present and future active players in the National Basketball Association,

Plaintiffs,

- against -

70 Civ. 1526

NATIONAL BASKETBALL ASSOCIATION, a joint venture, MADISON SQUARE GARDEN CENTER, INC., MADISON SQUARE GARDEN CORPORATION, MILWAUKEE PROFESSIONAL SPORTS & SERVICES, INC., THE CAPITAL BULLETS BASKETBALL CLUB, INC. (formerly THE BALTIMORE BULLETS BASKETBALL CLUB, INC.), RIKO ENTERPRISES, INC., KINGS PROFESSIONAL BASKETBALL CLUB, INC. (formerly CINCINNATI BASKETBALL CLUB COMPANY), BOSTON CELTIC BASKETBALL CLUB, INC. (formerly TRANS NATIONAL COMMUNICATIONS, INC.), DETROIT PISTONS BASKETBALL COMPANY (formerly ZOLLNER CORPORATION), ATLANTA HAWKS BASKETBALL, INC., CALIFORNIA SPORTS, INCORPORATED, THE CHICAGO PROFESSIONAL BASKETBALL CORPORATION, PHOENIX PROFESSIONAL BASKETBALL CLUB, GOLDEN STATE WARRIORS (formerly SAN FRANCISCO WARRIORS), SEATTLE SUPERSONICS CORPORATION, TEXAS SPORTS INVESTMENTS, INC. (formerly SAN DIEGO BASKETBALL CLUB), BUFFALO BRAVES, INC., CLEVELAND PROFESSIONAL BASKETBALL COMPANY, PRO BASKETBALL, INC., NEW ORLEANS PROFESSIONAL BASKETBALL CLUB and AMERICAN BASKETBALL ASSOCIATION,

Defendants.

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A P P E A R A N C E S:

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Attorneys for Chester Walker
By Richard G. Phillips, Esq.

CARTER, District Judge

FINDINGS OF FACT

This class action ("the Robertson action"), having been commenced by fourteen named plaintiffs including Chester Walker on April 15, 1970, against the National Basketball Association and its member teams ("the NBA defendants"), and the American Basketball Association ("ABA"), and the NBA defendants' motion to temporarily restrain prosecution of an action filed on January 30, 1976 by Chester Walker in the United States District Court for the Eastern District of Pennsylvania entitled Chester Walker v. National Basketball Association, et al. (Civil Action No. 76-291) ("the Pennsylvania action") and to afford certain other relief having been granted by this court on February 3, 1976 after hearing counsel for Chester Walker in the Pennsylvania action, counsel for plaintiffs in the Robertson action and counsel for the NBA defendants, and the aforesaid temporary restraining order having been extended by order of this court dated February 13, 1976 upon the consent of counsel for Chester Walker in the Pennsylvania action, and the NBA defendants' motion to preliminarily enjoin prosecution of Chester Walker's Pennsylvania action and to afford certain other relief having come on to be heard on February 17, 1976, and the court having considered the affidavit of

Michael A. Cardozo, sworn to February 3, 1976, in support of the instant motion, and the documentary and testimonial evidence having been received and the respective counsel for the parties having been heard in open court, the court makes the following findings:

1. Chester Walker is one of the fourteen named plaintiffs who commenced the Robertson action individually and as representatives of all present and future active players in the National Basketball Association ("NBA") on April 15, 1970. (Def. Ex. A, Cardozo aff., ¶¶2, 10)

2. On March 14, 1970, Walker signed a document in which he authorized the NBA to initiate one or more class actions on his behalf against the NBA to bring about an end to any agreement among the clubs or other entities to eliminate competition among them in the acquisition of talent and to assert a claim for damages on his behalf. (Cardozo aff., ¶ 10)

3. On February 14, 1975, over the opposition of the NBA defendants, this court granted the motion of the plaintiffs in the Robertson action, including plaintiff Walker, for class action certification pursuant to Rule 23(b)(1) of the Federal Rules of Civil Procedure. (389 F. Supp. 867; Cardozo aff., ¶13)

4. By order dated September 15, 1975 this court directed that a Notice of Pendency of Class Action be sent. (Def. Ex. D)

5. The deposition of Chester Walker was taken in the Robertson action on August 26-27, 1975; the deposition of Richard G. Phillips, Esq., Walker's counsel in his Pennsylvania action, was taken in the Robertson action on November 10, 1975. (Cardozo aff., ¶ 4)

6. On January 30, 1976, Chester Walker commenced an action in the United States District Court for the Eastern District of Pennsylvania entitled Chester Walker v. National Basketball Association, et al. (Civil Action No. 76-291) ("Pennsylvania action") which is duplicative of the Robertson action in that it seeks identical relief from some of the identical practices challenged herein. Walker's complaint in his Pennsylvania action is unverified. Walker's Pennsylvania action challenges as violations of the Sherman Act the NBA's college draft, the NBA's option

clause, the NBA's tampering rules, and the NBA's compensation policy, insofar as those practices have affected Walker. Those same practices are challenged in the Robertson action commenced by plaintiff Walker over five and one half years prior to the filing of his Pennsylvania action. (Def. Exs. A, B and E; Cardozo aff., ¶¶ 2, 6-9, 12)

7. Contemporaneous with the filing of his Pennsylvania action, Walker sought a temporary restraining order in that action, without any supporting affidavit, against the practices of the NBA defendants challenged therein. That motion was denied on the same day, January 30, 1976, by the Honorable J. William Ditter, Jr. of the United States District Court for the Eastern District of Pennsylvania. (Def. Ex. F; Cardozo aff., ¶ 5)

8. Walker has submitted no affidavit in opposition to the NBA defendants' motion for a preliminary injunction, nor did Walker testify at the preliminary injunction hearing held by this court on February 17, 1976.

9. Pursuant to the direction of this court, the bulk of the very extensive pretrial discovery conducted in the Robertson action is now, and was at the time of commencement of Walker's Pennsylvania action, completed. This court has also directed the Robertson action to go to trial on or about June 1, 1976. (Cardozo aff., ¶ 14)

10. In February of 1974, this court temporarily restrained the ABA from prosecuting in California an action closely related to the Robertson action. In January of 1976, this court temporarily restrained class plaintiff Wilton N. Chamberlain from prosecuting an action which sought the identical relief from some of the identical practices challenged in the Robertson action. (Cardozo aff., ¶¶ 3, 14)

11. Walker and his attorney in his Pennsylvania action, Mr. Phillips, had actual knowledge of the NBA defendants' motion for a preliminary injunction against prosecution of the aforementioned Chamberlain action and this court's tentative views expressed at the argument of that motion as to the inappropriateness of allowing a second duplicative action to be prosecuted in another federal court at the same time as the Robertson action was approaching trial in this court. Notwithstanding such knowledge, Walker's Pennsylvania attorney went ahead and commenced a duplicative action on Walker's behalf in the United States District Court for the Eastern District of Pennsylvania. (Cardozo aff., ¶4; tr. of February 17, 1976 hearing, pp 26-27)

On the basis of the foregoing, the court reaches the following

Conclusions of Law

1. The NBA defendants have met all the requirements for issuance of the preliminary injunction sought herein pending final determination of the Robertson action on the merits.

2. The preliminary injunction sought herein is being issued to protect the jurisdiction of this court.

3. The preliminary injunction sought herein is necessary to prevent impairment of this court's jurisdiction and to prevent the possibility of inconsistent rulings or relief from being rendered by another court, the very reason Walker, and the other named plaintiffs in the Robertson action, sought the Robertson action to be certified as a Rule 23(b)(1) class action. See 389 F. Supp. 867, 901.

4. Walker's Pennsylvania action is duplicative of and embraces the same issues and essentially the same transactions as the Robertson action. Accordingly, this court exercises its jurisdiction and authority to enjoin prosecution of Walker's Pennsylvania action, commenced over five and one half years after Walker commenced the Robertson action in this court.

- * -

5. The balance of convenience overwhelmingly tips in favor of allowing Walker's first action, the Robertson action, to proceed to trial while enjoining prosecution of Walker's second action, the Pennsylvania action, which is duplicative of issues before this court in the Robertson action.

6. This court in the exercise of its discretion concludes that the preliminary injunction sought herein should issue.

7. The NBA defendants will suffer irreparable harm unless the preliminary injunction sought herein issues:

(a) The NBA defendants will be forced to defend themselves in another federal court against an unnecessary and wasteful duplication of litigation at a time when the NBA defendants are scheduled to prepare the Robertson action for trial.

(b) The NBA defendants will face the possibility of inconsistent rulings or relief being issued by another federal court on the very same issues before this court in the Robertson action.

- * -

(c) The NBA defendants will lose any protection against the institution of separate actions by parties to the Robertson class action which was afforded them by this court's Rule 23(b)(1) class action certification.

(d) The NBA defendants will be threatened with the spectre of other basketball players, who come within the Robertson class as approved by this court, filing separate actions in other forums seeking relief from the practices challenged in the Robertson action.

8. The public interest in the sound and orderly administration of justice requires that the preliminary injunction sought herein be issued.

And as a result thereof, it is

ORDERED, pursuant to Rules 23(d) and 65 of the Federal Rules of Civil Procedure and the inherent powers of the federal courts, that pending a final determination of the Robertson action, plaintiff Chester Walker, his agents, attorneys and all persons acting in concert with them, are hereby enjoined from prosecuting in any manner the action filed in the United States District Court for the Eastern District of Pennsylvania entitled Chester Walker v. National Basketball Association, et al. (Civil Action No. 76-291).

This Order shall be effective forthwith provided that the NBA defendants post a bond in the sum of $5,000.00 conditioned for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

SO ORDERED.

Dated: New York, New York
February 27, 1976

Robert L. Carter
ROBERT L. CARTER
U.S.D.J.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al., Plaintiffs,	:	70 Civ. 1526 (RLC)
-against-	:	
NATIONAL BASKETBALL ASSOCIATION, et al., Defendants.	:	
AMERICAN BASKETBALL ASSOCIATION, et al., Cross-claimants,	:	
-against-	:	
NATIONAL BASKETBALL ASSOCIATION, et al., Cross-defendants.	:	

ANSWERS TO CROSS-CLAIMANT AMERICAN BASKETBALL ASSOCIATION'S THIRD SET OF INTERROGATORIES BY CROSS-DEFENDANT CLEVELAND PROFESSIONAL BASKETBALL COMPANY

Cross-defendant Cleveland Professional Basketball Company hereby makes the following answers to Cross-claimant American Basketball Association's Third Set of Interrogatories. In accordance with the May 19, 1975 ruling of this Court, and for the reasons set forth in this cross-defendant's December 8, 1975 responses and objections to the ABA's third set of interrogatories, the information supplied is for the period January 1, 1970 to the present.

These answers are being given before complete discovery and factual investigation in this case has been completed. This cross-defendant therefore reserves its right to supplement its answers at a subsequent time.

indemnity agreements are also shown by such contracts. Therefore the information sought by subparts (a)-(c) can be ascertained from documents produced and the burden of ascertaining the information is substantially the same for cross-claimants as for this cross-defendant.

The following payments were made pursuant to the agreement(s) to indemnify entered into by this cross-defendant:

Player	Payment(s) Made	Date(s) of Payment(s)
	None	

All documents relating to the indemnities have been produced.

INTERROGATORY NO. 12:

Identify for each year, each player on your team who achieved so-called "free-agent" status. For purposes of this interrogatory a "free-agent" is defined as a player who is no longer under contract because: (1) he finished playing through the option period of his contract; (2) his contract contained no option and he finished playing through the term of his contract; or (3) the option in his contract was not exercised.

Answer to 12:

See this cross-defendant's supplemental answer to Interrogatory 24 of Plaintiffs' First Set of Interrogatories which identifies players who achieved "free-agent" status by playing through the option period of the contract.

The following players, from 1970 through 1975, achieved "free-agent" status because the contract contained no option and the player played through the term of his contract, or because the option in the contract was not exer-

cised:

1970:

1971:

1972:

1973:

1974:

1975: Fred Foster

INTERROGATORY NO. 13:

State whether you ever owned, in whole or in part, or operated, (i) a professional hockey team or (ii) a facility in which professional basketball or hockey is or has been played, and if so:

(a) Identify the professional hockey team or facility involved;

(b) Set forth the ownership interest, if any, you had in such team or facility;

(c) State when you had such an ownership or operating interest; and

(d) Identify the professional basketball or hockey teams that played in that facility.

Answer to 13:

See this cross-defendant's answer to Interrogatory 41 of the ABA's second set of interrogatories.

INTERROGATORY NO. 14:

Identify (by caption title, court or other body before whom the matter was or is pending, index number, citation to all decisions officially or otherwise reported, and name and last known address of the attorneys who represented you) all lawsuits, arbitrations, or other adversary proceedings in which:

(a) You were a party and any of the following were adverse parties to you: the NBA, NBA member teams, the ABA, ABA member teams other than yourself, owners of former or present ABA teams, potential buyers of an ABA team, NBA players, ABA players, agents of NBA or ABA players, colleges or universities, the National Collegiate Athletic Association, local television or radio stations, national radio or television networks, or owners or operators of facilities; and

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al., Plaintiffs, vs. NATIONAL BASKETBALL ASSOCIATION, et al., Defendants.	
AMERICAN BASKETBALL ASSOCIATION, et al., Cross-claimants, vs. NATIONAL BASKETBALL ASSOCIATION, et al., Cross-defendants.	NOTICE OF APPEAL 70 Civ. 1526 (RLC)

NOTICE is hereby given that WILTON N. CHAMBERLAIN, respondent in the above-captioned action, hereby appeals to the United States Court of Appeals for the Second Circuit from the order entered in this action on the 31st day of March, 1976, granting a preliminary injunction.

Dated: April 23, 1976.

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